

HOUSE BILL REPORT

HB 1371

As Reported by House Committee On:
Transportation

Title: An act relating to updating the distracted driving infraction.

Brief Description: Modifying the infraction of and penalties for distracted driving.

Sponsors: Representatives Farrell, Lovick, Haler, Harris, Clibborn, Orwell, Kagi, Robinson, Appleton, Ryu, Goodman, Tarleton, Gregerson, Sells, Ormsby and Cody.

Brief History:

Committee Activity:

Transportation: 2/9/17, 2/15/17 [DPS].

Brief Summary of Substitute Bill

- Replaces current laws that prohibit use of a hand-held cellular phone and texting while driving with a prohibition on a driver using a personal electronic device with his or her hands while driving to conduct a range of activities.
- Permits the minimal use of a finger to activate, deactivate, or initiate a function of the device and the use of a hand or finger to control the built-in features of a motor vehicle through the use of a touch screen control panel.
- Provides for exceptions to prohibited personal electronic device usage for contacting emergency services; specified uses by transit system employees; activities that are federally authorized for commercial motor vehicle drivers; the operation of an amateur radio station and two-way or citizens band radio services; the operation of an authorized emergency vehicle; and the operation of a tow truck in certain specified circumstances.
- Preempts local laws that restrict the use of electronic devices while driving.
- Doubles the penalty amount due for personal electronic device use infractions for second and subsequent offenses within five years.

HOUSE COMMITTEE ON TRANSPORTATION

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Chapman, Gregerson, Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Riccelli and Tarleton.

Minority Report: Do not pass. Signed by 10 members: Representatives Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Hayes, Irwin, Pike, Rodne, Shea, Stambaugh and Van Werven.

Minority Report: Without recommendation. Signed by 1 member: Representative Young.

Staff: Jennifer Harris (786-7143).

Background:

Prohibited Activities and Exceptions.

A person operating a moving motor vehicle is guilty of a traffic infraction if he or she holds a wireless communications device to his or her ear. A person operating a moving motor vehicle is also guilty of a traffic infraction if he or she sends, reads, or writes a text message by means of a wireless communications device.

The following activities are excluded from the device-to-ear infraction: the operation of an amateur radio station by a person who holds a valid amateur radio operator license; and the operation of two-way or citizens band radio services.

Exceptions for both infraction types are similar and apply to a person operating: (1) an authorized emergency vehicle; (2) a voice-operated global positioning system (GPS) that is affixed to the vehicle for a text-message infraction (or a device in hands-free mode, for a device-to-ear infraction); or (3) a moving motor vehicle while using a wireless communications device to (a) report illegal activity, (b) summon medical or other emergency help, (c) prevent injury to a person or property, or (d) relay information that is time sensitive between a transit or for-hire operator and that operator's dispatcher so long as the device is permanently affixed to the vehicle. For a device-to-ear infraction, there are also exceptions for operating a tow truck responding to a disabled vehicle and for operating a moving motor vehicle while using a hearing aid.

Special Application of Restrictions.

The holder of an intermediate driver's license or driver's instruction permit is not permitted to use a wireless communications device except for the purposes listed in exception (3) above.

A person operating a commercial motor vehicle is not prohibited from using an electronic wireless communications device to send, read, or write a text message if he or she has moved the vehicle to the side of or off of the roadway and has stopped in a location where the vehicle can safely remain stationary, or if such activity is necessary to communicate with law enforcement officials or other emergency services. However, only the following exceptions apply to a person operating a commercial motor vehicle while using a wireless

communications device: when necessary to communicate with law enforcement officials or other emergency services, or using a mobile telephone in hands-free mode. The other exceptions noted above are not applicable to a person operating a commercial motor vehicle.

Violations.

Infractions for sending, reading, or writing a text message by means of a wireless communications device are not permitted to become part of a driver's record, nor are they permitted to be made available to insurance companies or employers.

State Preemption.

The state preempts any local law regulating the use of wireless communications devices in motor vehicles.

Summary of Substitute Bill:

A person who uses a personal electronic device while driving a motor vehicle on a public roadway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, is guilty of a traffic infraction. The activity of driving does not include when a vehicle has pulled over to the side of, or off of, a roadway and has stopped in a location where it can safely remain stationary.

A personal electronic device means a portable electronic device that is capable of wireless communication or electronic data retrieval and is not manufactured primarily for hands-free use in a motor vehicle. It includes cell phones, tablets, laptops, two-way messaging devices, and electronic games. The following activities are prohibited while driving: (1) holding a personal electronic device in either or both hands; (2) using a hand or finger to compose, send, read, view, access, browse, transmit, save, or retrieve email, text messages, instant messages, photographs, or other electronic data; and (3) watching a video on a personal electronic device. The minimal use of a finger to activate, deactivate, or initiate a function of a personal electronic device, as well as the use of a hand or finger to control the built-in features of a motor vehicle through the use of a touch screen control panel, are permitted.

Exceptions for this infraction apply to the following uses: (1) the use of a personal electronic device to contact emergency services; (2) a transit employee's use of a system for time-sensitive relay communication between the transit system employee and the transit system's dispatch services; (3) a commercial motor vehicle driver's use of a personal electronic device within the scope of his or her employment if such use is permitted under federal law; (4) the operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the Federal Communications Commission; (5) the operation of two-way or citizens band radio services by a person driving a commercial motor vehicle; (6) the operation of an authorized emergency vehicle; and (7) the operation of a tow truck responding to a disabled vehicle through the use of the telephone call functionality of a wireless communications device.

The state preempts local laws regulating the use of personal electronic devices in motor vehicles while driving. Second and subsequent infractions received within a five-year period for using a personal electronic device while driving are subject to two times the standard driving infraction base penalty amount, which would currently result in penalties and fees that total approximately \$235.

Current laws against holding a wireless communications device to one's ear and sending, reading, or writing a text message by means of a wireless communications device while driving are repealed.

Substitute Bill Compared to Original Bill:

The substitute bill incorporates the following exemptions from the prohibition on the use of personal electronic device usage while driving: (1) the operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the Federal Communications Commission; (2) the operation of two-way or citizens band radio services by a person driving a commercial motor vehicle; (3) the operation of an authorized emergency vehicle; and (4) the operation of a tow truck responding to a disabled vehicle through the use of the telephone call functionality of a wireless communications device. It also exempts from prohibited uses the use of a hand or finger to control the built-in features of a motor vehicle through the use of a touch screen control panel.

The substitute bill modifies the prohibition on the use of a personal electronic device while driving to apply to driving on public roadways rather than on public highways, and specifies when the penalty amount due for personal electronic device infractions for second and subsequent offenses is doubled to apply when more than one of these infractions is issued within a five-year period.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2018.

Staff Summary of Public Testimony:

(In support) People love their phones so much that they have a hard time putting them down when they need to drive and pay attention. Accidents and fatal accidents are up and this is, in part, due to the use of phones while driving. This law needs to be updated—it is a law for flip phones. It is hard to enforce the texting provision, because a phone can be used to do a number of things.

This is the third legislative session a bill on this topic has received a public hearing. A growing number of families have come forward to campaign to raise awareness about the dangers of driving under the influence of electronics. Traffic deaths have been increasing since 2014. A big portion of this increase is due to distracted driving, much of which relates

to the use of personal electronic devices. Children are very impacted by distracted driving. These injuries and deaths are preventable.

The average text or phone call takes the driver's attention off the road from five to seven seconds, and during that time, a vehicle travels the distance of one and one-half football fields. Studies show that this level of distracted driving puts us at a reaction time equivalent to two to three times the legal limit for Driving Under the Influence. The law needs to be easy to enforce. The Washington State Patrol is already working on the education component of reducing this behavior by doing outreach in schools and with community groups. Enforcement is more effective than education. There are ways to use GPS without using handheld devices. Changing the law can keep people out of trauma centers.

Distracted driving is an epidemic. There just is not a safe way to text in the car. The primary behavior needs to be addressed. With seat belt enforcement, education helped, but once it became a primary infraction that was enforced, this was the nudge people needed to make the behavior change.

Washington drivers support a ban on certain uses of cellphones. Some, however, still use these devices while driving. There is a disconnect between views and behaviors. Medical bills for those injured, sometimes paid with taxpayer dollars, can be in the hundreds of thousands of dollars for a single accident. In the case of distracted driving leading to the deaths of others, drivers are paying a small fine and walking away. With the increase in transportation funding, this issue will become more and more important with more construction work being done.

Law enforcement officers often discover that drivers suspected of committing a DUI, have been using their phones for Facebook, Snapchat, to make a video, to respond to email, or to watch a television show. These dangerous activities are all legal under current law. Law enforcement officers sometimes can only issue warnings to drivers because they cannot prove the driver was not doing something other than texting. This bill sets clear expectations for drivers and supports law enforcement officers.

(Opposed) None.

(Other) Amateur radio providers are very concerned about this bill. Current distracted driving laws include an exemption for amateur radio service for those who have received a license from the Federal Communications Commission. The bill does not include that exemption. An exemption for amateur radio service should be included in this bill.

For the past 80 years, there have been two-way radios in vehicles. Only in the last few years, with the advent of cell phones, have we seen this disastrous change in the rate of collisions. The amateur radio community does a lot of emergency services work. Without this exemption, that work will be stopped. Hundreds of radio operators perform thousands of hours of service in this state, leading community parades and providing emergency response services. Mobile radios that are handheld and have one button for communication are simple devices that do not cause a problem. They should be exempted from a law against distracted driving.

Persons Testifying: (In support) Representative Farrell, prime sponsor; Charles Cope; Gina Bagnariol-Benavides; Tina Meyer; Lavera Wade; Mel Sorenson, Property Casualty Insurers Association of America; Larry Shannon, Washington State Association for Justice; Beth Ebel, American Academy of Pediatrics; Rachel Pierson, Distributive Education Clubs of America; Lloyd Flem; Calvin Beyer, Lakeside Industries; Codfy Sjogren, Diversified Northwest Inc.; Monica Alexander, Washington State Patrol; Brian Williams, Auburn Police Department and King County Target Zero Task Force; Chris Veblen; and Dan Coon, AAA Washington.

(Other) Monte Simpson and Lee Chambers, American Radio Relay League.

Persons Signed In To Testify But Not Testifying: None.