

HOUSE BILL REPORT

ESHB 1371

As Passed House:
March 7, 2017

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

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

Sponsors: House Committee on Transportation (originally sponsored by Representatives Farrell, Lovick, Haler, Harris, Clibborn, Orwall, Kagi, Robinson, Appleton, Ryu, Goodman, Tarleton, Gregerson, Sells, Ormsby and Cody).

Brief History:

Committee Activity:

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

Floor Activity:

Passed House: 3/7/17, 52-45.

Brief Summary of Engrossed 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; telephone call functionality by a tow truck operator; and drivers of highly autonomous vehicles in certain specified circumstances as of 2021.
- 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.

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.

- Prohibits first and second offenses for using a personal electronic device while driving from becoming part of a driver's record and being made available to insurance companies.
- 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.
- 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.

HOUSE COMMITTEE ON TRANSPORTATION

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 Electronic Device Usage 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 Electronic Device Usage 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.

Electronic Device Usage 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.

Electronic Device Usage State Preemption.

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

Other Forms of Distracted Driving.

The only other offense in the distracted driving category under state law is Embracing Another While Driving. A driver is guilty of Embracing Another While Driving if he or she is prevented from the free and unhampered operation of the vehicle due to embracing another person; this activity serves as prima facie evidence of reckless driving.

There are also a number of local jurisdictions in Washington that have ordinances in place for the offense of inattentive driving, including the City of Seattle, the City of Bellevue, the City of Yakima, King County, and Snohomish County.

Autonomous Vehicles.

There are no state laws regulating vehicles in the state that only apply when autonomous technology has been installed in the vehicle. Federal guidelines on autonomous vehicles distinguish automated systems that require a human driver to monitor the driving environment from those that do not at least a portion of the time. Guidelines designate

vehicles with automated systems that are responsible for monitoring the driving environment at least in certain circumstances as highly automated vehicles (HAVs).

Highly automated vehicles are classified as Society of Automotive Engineer (SAE) automotive driving system levels 3, 4, and 5. For SAE vehicle automotive driving system levels 0, 1, and 2, the human driver is always responsible for monitoring the driving environment, despite the availability of automated driver assistance or partially automated functionality. Currently, only SAE automation levels 0 through 2 are being sold commercially.

Summary of Engrossed Substitute Bill:

Personal Electronic Device Usage.

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; (7) the use of the telephone call functionality of a wireless communications device by a tow truck operator; and (8) beginning in 2021, the use of a personal electronic device by the driver of an autonomous vehicle when the vehicle is being operated in a mode that does not require the driver to be in active physical control of or continuously monitoring the vehicle.

"Autonomous vehicle" is defined 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, whether or not the technology is engaged, excluding

vehicles equipped with one or more systems that enhance safety or provide driver assistance but are not capable of driving or operating the vehicle without the active physical control or monitoring of a human operator. An "autonomous vehicle" meets the definition of level 3, 4, or 5 of the Society of Automotive Engineers' (SAEs') taxonomy and definitions for terms related to on-road motor vehicle automated driving systems.

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. The first and second infractions for using a personal electronic device while driving received within five years may not become part of a driver's record, nor may a finding that a person committed a first and second offense be made available to insurance companies.

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.

Dangerously Distracted Driving.

Driving in a dangerously distracted manner is defined 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. Dangerously distracted driving is 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.

The monetary penalty for dangerously distracted driving must be set equal to the unscheduled infraction base penalty amount established by rule by the Supreme Court in its schedule of monetary penalties for infractions. The use of revenues obtained from the secondary infraction of dangerously distracted driving is restricted to the support of programs dedicated to reducing distracted driving and improving driver education on distracted driving.

The Distracted Driving Prevention Account, an appropriated account, is established, and use of its funds is restricted 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. The Distracted Driving Prevention Account is required to receive any interest earned based on its average daily balance.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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.