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## Transportation Committee

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### SSB 5289

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

**Sponsors:** Senate Committee on Transportation (originally sponsored by Senators Rivers, Liias, Miloscia, Carlyle and Kuderer).

#### 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 a personal electronic device while driving.
- 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; and the operation of an authorized emergency vehicle.
- 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.
- 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.

**Hearing Date:** 3/23/17

**Staff:** Jennifer Harris (786-7143).

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*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.*

## **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 highway 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 it is necessary to communicate with law enforcement officials or other emergency services, or the use of 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 for distracted driving activities under state law is "Embracing Another While Driving." A driver is guilty of this offense 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 cities of Seattle, Bellevue, and Yakima, and King and Snohomish counties.

### **Summary of Bill:**

#### Personal Electronic Device Usage.

A person who uses a personal electronic device while driving a motor vehicle on a public highway, 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 highway 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 that 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. Two-way radios, citizens band radios, and amateur radio equipment are excluded from the definition of personal electronic device.

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 is 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 system 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; and (4) the operation of an authorized emergency vehicle.

The state preempts local laws regulating the use of personal electronic devices in motor vehicles while driving.

Second and subsequent infractions received 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.

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 that motor vehicle on a highway. Dangerously distracted driving is a secondary traffic infraction, which limits 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 includes a set base penalty of \$30, plus any applicable fees, which would currently total approximately \$100 in penalty and fees. The use of base penalty 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2018.