

HOUSE BILL REPORT

SSB 5289

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

Brief History:

Committee Activity:

Transportation: 3/23/17, 4/4/17 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Replaces current laws that prohibit the 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

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.

reducing distracted driving and improving driver education on distracted driving.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended. Signed by 15 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Wylie, Vice Chair; Chapman, Gregerson, Kloba, Lovick, McBride, Morris, Ortiz-Self, Pellicciotti, Riccelli, Tarleton and Young.

Minority Report: Do not pass. Signed by 8 members: Representatives Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Harmsworth, Assistant Ranking Minority Member; Irwin, Pike, Shea, Stambaugh and Van Werven.

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

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 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 Amended 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 electronic mail (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. Reference to these laws in the laws that regulate the driving of commercial motor vehicles is removed, and the definition of "serious traffic violation," as that term applies to grounds for temporary disqualification from driving a commercial motor vehicle, is modified to reference the prohibition against using a personal electronic device while driving instead.

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.

Amended Bill Compared to Substitute Bill:

The amended bill modifies the definition of "serious traffic violation," as that term applies to grounds for temporary disqualification from driving a commercial motor vehicle, to replace references to current laws against using a handheld mobile telephone and texting while driving with a reference to the prohibition against using a personal electronic device while driving. The amended bill also delays the act's effective date by one year, from January 1, 2018, to January 1, 2019.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on April 6, 2017.

Effective Date of Amended Bill: The bill takes effect on January 1, 2019.

Staff Summary of Public Testimony:

(In support) In recent years, there has been a dramatic increase in distracted driving collisions that have caused the loss of life; the loved ones of many individuals who have been injured or killed have been impacted. When drivers decide to engage in the use of an electronic device while driving, they are doing so at great risk, they are not just endangering themselves; they are endangering all of those around them.

This bill provides consequences in the form of fines and penalties for inappropriately using or accessing cell phones and other technologies in the car, and also addresses other kinds of distractions that interfere with the operation of a motor vehicle on a highway. It is a good consumer bill in terms of safety, but also in terms of the practical reality of bringing down the costs of automobile insurance. The more that is done to stop unnecessary collisions caused by distracted driving by educating the population about the consequences of distracted driving, the more the costs of auto insurance can be kept down.

(Opposed) None.

(Other) In its health impact review, and based on evidence regarding enforcement challenges of current law, coupled with evidence from scientific literature regarding the effectiveness of enforcing laws on seatbelt use and impaired driving, the Washington State Board of Health (Board) found a fair amount of evidence that strengthening distracted driving laws in the state would likely decrease rates of distracted driving. The Board found strong evidence that decreasing distracted driving in the state would likely improve health outcomes by decreasing injuries and fatalities from collisions.

A number of studies have examined associations between talking on the phone, texting, checking email, and driving performance. One study found that texting while driving negatively impacted nearly all aspects of safe driving performance. Evidence indicates that distracted driving is a major contributor to vehicle collisions that result in injuries and

fatalities. Drivers between the ages of 16 and 29 are more likely to drive distracted, to be in vehicle collisions involving distracted driving, and to be injured or killed in such collisions.

The bill could be improved by adding an exception for electric vehicle drivers who use the PlugShare, or a similar application on cell phones, to locate the nearest public station to charge electric vehicles.

Persons Testifying: (In support) Senator Rivers, prime sponsor; Shelley Baldwin, Washington Traffic Safety Commission; Mel Sorenson, Property Casualty Insurers Association of America, Allstate, and American Family Insurance; and Lonnie Johns-Brown, Office of the Insurance Commissioner.

(Other) Alexandra Montano, State Board of Health; and Ty Rosenow.

Persons Signed In To Testify But Not Testifying: None.