

# SENATE BILL REPORT

## ESHB 1371

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As Reported by Senate Committee On:  
Transportation, March 29, 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:** Passed House: 3/07/17, 52-45.

**Committee Activity:** Transportation: 3/28/17, 3/29/17 [DPA, DNP, w/oRec].

### Brief Summary of Amended Bill

- Creates a new traffic infraction, beginning January 1, 2018, that prohibits a person from using a personal electronic device while driving a motor vehicle on a public highway.
- Applies to holding a device in either hand, and also the use of 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.
- Establishes a new traffic infraction of driving dangerously distracted, that includes any activity not related to the actual operation of a motor vehicle that interferes with the safe operation of the vehicle and can only be enforced as a secondary action.

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass as amended.

Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Lias, Assistant Ranking Minority Member; Cleveland, Fortunato, O'Ban, Saldaña, Takko, Van De Wege and Wilson.

**Minority Report:** Do not pass.

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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.*

Signed by Senators Ericksen and Hawkins.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Walsh.

**Staff:** Kim Johnson (786-7472)

**Background:** It is a traffic infraction for any driver over 18 years of age who is operating a moving motor vehicle (1) to hold a wireless communications device to their ear, or (2) to send, read, or write a text message; unless the person is using a hands-free device. The two different infractions have some of the same exemptions, which include when a driver is:

- operating an authorized emergency vehicle; or
- reporting illegal activity, summoning medical or emergency help, or using the device to prevent injury to a person or property.

A violation of the provisions listed above have an associated base penalty of \$48 and additional statutory assessments of \$88 for a total penalty of \$136. The infraction does not become part of the driver's record and is not available to insurance companies or employers.

Any driver holding an instruction permit or any intermediate driver's license, drivers that are at least 16 years of age and under 18 years of age, operating a moving motor vehicle while using a wireless communications device for any purpose other than to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property is guilty of a traffic infraction. A violation of this provision has an associated base penalty of \$48 and additional legislative assessments of \$88 for a total penalty of \$136.

The state law related to drivers holding a wireless communication device to their ear supersedes any local laws regulating the use of wireless devices in motor vehicles.

A Health Impact Review is available for the companion, SB 5289 (2017), on the Washington State Board of Health website.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Amended Bill:** Beginning January 1, 2018, a person who uses a personal electronic device while driving a motor vehicle on a public highway is guilty of a traffic infraction. The first violation of the infraction carries a base penalty of \$48 and a total penalty of \$136. Second and subsequent violations of this infraction double the base penalty to \$96, resulting in a total penalty of approximately \$235.

Uses means:

- holding a personal electronic device in either hand;
- using your 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
- watching video on a personal electronic device.

However, the minimal use of a finger to activate, deactivate, or initiate a function of a device is not precluded.

A personal electronic device means any portable electronic device that is capable of wireless communication or electronic data retrieval, but does not include two-way radio, citizen band radio, or amateur radio equipment.

Driving means operating a motor vehicle on a public highway, and includes when the vehicle is temporarily stopped because of traffic or a stop light or stop sign. Driving does not include when the vehicle has pulled over and stopped on the side of an active roadway and can remain stationary safely.

The following actions are exempted from the infraction:

- a driver who is summoning emergency services;
- a driver operating an authorized emergency vehicle;
- a transit system employee using a system for time-sensitive relay communication with transit dispatch services; and
- a commercial motor vehicle driver who uses a device within the scope of an individual's employment as allowed by federal law.

The state law related to drivers using a personal electronic device supersedes any local laws regulating the use of wireless devices in motor vehicles.

The existing statutes related to cell phone and texting infractions and the applicable exemptions covering to drivers over 18 years of age are repealed as of January 1, 2018.

It is a traffic infraction to drive dangerously distracted. Dangerously distracted means a person who engages 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 any highway. The new infraction may only be enforced as a secondary action when the driver has been detained for a suspected violation of a separate traffic infraction. The base penalty for the infraction is \$30; the base penalty must be deposited into the Distracted Driving Prevention account and may only be appropriated for programs dedicated to reducing distracted driving and improving driver education on distracted driving.

The definition for commercial driver's license holders of "serious traffic violation" is updated to reflect the new infraction of using a personal electronic device while driving a motor vehicle.

#### **EFFECT OF TRANSPORTATION COMMITTEE AMENDMENT(S):**

- Removes the following exemptions: (1) a tow truck operator making a call only; (2) after January 1, 2021, an autonomous vehicle while it is operated in a mode that does not require the person to be in actual physical control of a moving vehicle; and (3) operating during an emergency situation or extraordinary circumstances that have temporarily caused a significant traffic delay.
- Modifies the exemption for a Amateur Radio Operator (HAM) by removing the requirement that the operator be licensed by the FCC.
- Removes the limitation that citizen band two-way radio operation exemption is limited to commercial drivers.

- Reduces the base penalty from \$48 to \$30 for the new dangerously distracted driving infraction.
- Makes a technical correction to the definition of serious traffic violation for commercial drivers to refer to the new driving while using a personal electronic device infraction.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Striking Amendment:** *The committee recommended a different version of the bill than what was heard.* PRO: I shared this bill with a first grade class recently and every one of them was eager to share a story when their parent had used their cell phone in the car. We are raising an entire generation to think that using your device while you are driving is ok. It's not and we need to do something now.

Accidents and fatal accidents are up and this is, in part, due to the use of phones while driving. It is hard to enforce the texting provision, because a phone can be used to do a number of things.

This has affected me differently. My son Cody was working as a flagger. The driver that struck my son said, "I wasn't texting, I was looking at my phone, but I wasn't texting." My son died 151 days later. My son spent a month at Harbor View and four months at another hospital. He suffered a stroke and could not speak. He suffered a massive heart attack due to the injuries he had sustained. We had to put a DNR on our 23 year old son three times. We had to do this because someone was looking at their phone instead of what they were supposed to be doing. There will be another mother here next year, so if nothing else please be willing to take a step forward and fix this law. It is broken.

The insurance industry supports this bill. Our laws need to be modernized.

**Persons Testifying:** PRO: Representative Jessyn Farrell, Prime Sponsor; Tina Meyer, MOM; Daniel Coon, AAA Washington; Jean Leonard, Washington Insurers, State Farm, Nationwide, NAMIC; Shelly Baldwin, Washington Traffic Safety Commission.

**Persons Signed In To Testify But Not Testifying:** No one.