

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 222

(Delegate Malone, *et al.*)

Environmental Matters

Judicial Proceedings

**Motor Vehicles - Use of Wireless Communication Device - Prohibited Acts,
Enforcement, and Penalties**

This bill clarifies that the prohibition against the use of a wireless communication device applies to all drivers younger than age 18 and further specifies that the prohibition applies to operating a motor vehicle in the travel portion of the roadway. Primary enforcement is authorized, as the provision limiting enforcement to a secondary action is repealed. The bill expands, to the travel portion of the roadway, the prohibition against using a handheld telephone by the operator of a school vehicle that is carrying passengers. For fully licensed adult drivers, the prohibition against using the driver's hands to use a handheld telephone, except as specified, is also expanded to operating a motor vehicle on the travel portion of the roadway, rather than while the motor vehicle is in motion. Primary enforcement for the operators of school vehicles and adult drivers is also authorized, as the provision limiting enforcement to a secondary action is repealed. The bill increases the penalties for the offenses and establishes that the offense is treated as a typical traffic offense. Accordingly, a violator is guilty of a misdemeanor and is subject to a maximum penalty of \$500 and the assessment of points against the driver's license.

Fiscal Summary

State Effect: General fund revenues increase from the increase in and expansion of the penalty provisions applicable to these offenses. Enforcement can be handled with existing resources.

Local Effect: Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: A “wireless communication device” means a handheld or hands-free device used to access a wireless telephone service or a text messaging device.

Wireless Devices: Except to contact a 9-1-1 system in an emergency, a minor holding a learner’s instructional permit or a provisional driver’s license is prohibited from using a wireless communication device while operating a motor vehicle. A violator is subject to license suspension for up to 90 days by the Motor Vehicle Administration (MVA). This prohibition on minor drivers is only enforceable as a secondary action when a police officer detains a minor driver for a suspected violation of another provision of the Annotated Code.

A violator of this provision is guilty of a misdemeanor and subject to a maximum fine of \$500. The prepayment penalty established by the District Court for this offense is \$70. If the violation contributes to an accident, the prepayment penalty increases to \$110. MVA is required to assess one point against the driver’s license for a violation, or three points if the violation contributes to an accident.

Handheld Phones: The driver of a school vehicle that is carrying passengers and is in motion is prohibited from using a handheld telephone. The prohibition also applies to the holder of a learner’s instructional permit or provisional driver’s license who is age 18 or older and in a vehicle that is in motion. Any other adult driver of a motor vehicle that is in motion may not use a handheld telephone; instead, the driver may only use the driver’s hands to initiate or terminate a wireless telephone call or to turn the handheld telephone on or off. These prohibitions do not apply to the emergency use of a handheld telephone, including calls to a 9-1-1 system, hospital, ambulance service provider, fire department, law enforcement agency, or first aid squad. These prohibitions also do not apply to law enforcement or emergency personnel when acting within the scope of official duty, the use of a handheld telephone as a text messaging device, or the use of push-to-talk technology by a commercial operator.

The offense is enforceable as a secondary action only. For a first offense, the violator is subject to a maximum fine of \$40 and points may not be assessed against the driver’s license unless the offense contributes to an accident, in which case three points are assessed and the District Court prepayment penalty increases to \$80. The court is authorized to waive the fine for a first-time conviction if the person proves that he/she has acquired a hands-free accessory, attachment, add-on, or built-in feature for the handheld telephone that will allow the person to operate a motor vehicle in compliance with the bill’s provisions. For a second or subsequent offense, the fine is \$100 and one point is assessed against the license. If the second offense contributes to an accident,

the prepayment penalty increases to \$140 and three points are assessed against the driver's license.

Background: A persistent issue with the use of cell phones and other wireless devices in motor vehicles has been the mixed results of published studies. For example, the Highway Loss Data Institute and the Insurance Institute for Highway Safety released the results of a study in December 2009 that claims no significant reduction in accidents has occurred in states that have enacted bans on handheld cell phones while driving. Some experts have attributed the absence of a decline to intermittent enforcement efforts, while others have said that handheld cell phone bans still do not address the real problem – that is, the distraction caused by the phone conversation itself. In 2010, the Highway Loss Data Institute released another study of texting and driving asserting that no crash reductions have occurred in the states that have enacted laws banning texting while driving. In fact, the bans have been associated with a slight increase in the frequency of insurance claims due to collision damage in the four states that were the focus of the study.

On the other hand, in September 2010, a study was released by researchers at the University of North Texas Health Science Center which asserted that talking and texting on cell phones while driving has killed 16,000 people from 2001 to 2007. Furthermore, the proportion of deaths attributable to these device distractions has increased although the total number of traffic fatalities in the United States has declined in recent years. A 2008 study of cell phones and driving involving brain imaging from the Center for Cognitive Brain Imaging and Carnegie Mellon University showed that just listening to a cell phone conversation while driving reduces the amount of brain activity devoted to driving by 37%. The scientists noted an overall decline in driving quality. Drivers were likely to weave in and out of lanes and commit other lane maintenance errors. The study concluded that engaging in a demanding cell phone conversation while driving could jeopardize judgment and reaction times. A 2006 study of real world driver behavior, completed by the National Highway Traffic Safety Administration and the Virginia Tech Transportation Institute, concluded that the most common distraction for drivers is cell phone use. Also, the number of crashes and near-crashes resulting from dialing a cell phone was nearly identical to the number of accidents resulting from listening or talking; although dialing is more dangerous, it occurs less often than listening or talking.

The U.S. Department of Transportation and the National Safety Council announced a national campaign in January 2010 to educate people about the dangers of driving while using a cell phone or text-messaging device. The campaign, called “Focus Driven,” is an outgrowth of national summits held on distracted driving in 2009 and 2010.

According to the Governors Highway Safety Association, eight states (California, Connecticut, Delaware, Maryland, New Jersey, New York, Oregon, and Washington) and

the District of Columbia prohibit the use of handheld phones by all drivers while operating a motor vehicle. Maryland authorizes secondary enforcement, while the other states and the District of Columbia authorize primary enforcement. Also, 18 states (Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, and Virginia) and the District of Columbia prohibit the operators of school vehicles that carry passengers from using a wireless telephone device while driving.

State Fiscal Effect: The District Court advises that no convictions were recorded in fiscal 2010 for violating the prohibition against use of a handheld telephone. Even so, the increase in the penalty, the expansion of the prohibition, and the authorization for primary enforcement will generate additional general fund revenues. A reliable estimate of the magnitude of the increase cannot be made, however.

Potential minimal increase in Transportation Trust Fund (TTF) expenditures due to additional administrative hearings to the extent that MVA imposes license suspensions on drivers younger than age 18 who violate the prohibition, offset by a potential minimal increase in TTF revenues from corrected license fees to restore suspended driver's licenses. However, the overall impact from additional license suspensions is likely to be negligible and can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Montgomery County, Department of State Police, Maryland Department of Transportation, Governors Highway Safety Association, Reuters News Service, Highway Loss Data Institute, Virginia Tech Transportation Institute, *American Journal of Public Health*, U.S. Department of Transportation, Department of Legislative Services

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