

Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE

House Bill 104

(Delegates Malone and Kach)

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 Primary enforcement is authorized, as the provision limiting enforcement to a secondary action is repealed.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of school vehicles and adult drivers is also authorized, as the provision limiting enforcement to a secondary action is repealed.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, potentially significantly, from 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. The court is authorized to waive the fine for a first-time conviction if the person proves that he or 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 law. 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, three points are assessed against the driver’s license.

Background: *Handheld Phones and Wireless Communication Devices – Maryland Enforcement:* For fiscal 2010, the District Court reported that there were no convictions recorded for violating the prohibition against use of a handheld telephone. Although all handheld phone offenses in Maryland are subject to secondary enforcement only, the number of recorded convictions increased substantially for fiscal 2011 as shown in **Exhibit 1**.

Exhibit 1
Electronic Device and Driving Citations
Fiscal 2011

<u>Offense While Driving</u>	<u>Enforcement Type</u>	<u>Open</u>	<u>Prepaid</u>	<u>Trial</u>	<u>Total Citations</u>
School Bus Driver w/ Handheld Device	Secondary	8	34	9	51
Permit/Prov. License Holder-Adult w/ Handheld Device	Secondary	20	45	32	97
Minor w/ Wireless Communication Device	Secondary	2	10	9	21
Fully Licensed Adult w/ Handheld Device	Secondary	956	4,315	798	6,069

Source: Administrative Office of the Courts

Cell Phones and Driving – Nationwide Developments: In December 2011, the National Transportation Safety Board (NTSB) recommended a national ban on the nonemergency use of all portable electronic devices (unless designed to support the driving task) including cell phones and text messaging devices while driving. The recommendation applies to hands-free as well as handheld devices. According to the Cellular Telecommunications Industry Association, there are more than 322.9 million wireless subscribers in the United States. A study released in December 2011 by the National Highway Traffic Safety Administration (NHTSA) estimates that, at any given daylight moment, 13.5 million drivers are using handheld cell phones in the United States. The recommendation of NTSB was issued after closing the investigation of a 2010 highway crash in Gray Summit, Missouri, in which 2 people were killed and another 38 were injured. A 19-year-old pickup driver, who had been texting, plowed into a tractor trailer which had slowed for a highway work zone. The driver had been using his device in violation of Missouri state law. NTSB also called for the use of a NHTSA model of high visibility enforcement to support targeted communication campaigns to more effectively impress upon drivers the dangers of distracted driving.

According to the Governors Highway Safety Association (GHSA), nine states (California, Connecticut, Delaware, Maryland, Nevada, 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, 19 states (Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, 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.

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.

Mixed Results in National Studies on Cell Phones and Driving: 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.

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 NHTSA 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.

Accident Documentation: While GSHA identifies at least 35 states and the District of Columbia that require law enforcement officers to document the use of wireless devices, especially cell phones, at the scene of an accident, the reliability of data gathered at the accident scene has been subject to challenge. According to GHSA, proposed federal legislation would require all states to collect data about distractions to qualify for certain federal funding.

State Fiscal Effect: General fund revenues increase due to the increase in the penalty, the expansion of the prohibition, and the authorization for primary enforcement. A reliable estimate of the magnitude of the revenue increase cannot be made. However, *for illustrative purposes only*, if the District Court were to set a prepayment penalty of \$70 for all adult handheld offenses which currently carry a maximum fine of \$40 for a first offense and primary enforcement doubles the number of such violations over fiscal 2011 levels, then general fund revenues could increase by almost \$625,000 annually. This estimate assumes that the court does not waive the penalty due to acquisition of a hands-free accessory.

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: HB 222 of 2011 passed the House as amended, but it received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 217 (Senator Robey, *et al.*) - Judicial Proceedings.

Information Source(s): Garrett and Howard counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; *CNN News.com*; Cellular Telecommunications Industry Association; Governors Highway Safety Association; Reuters News Service; Highway Loss Data Institute; Insurance Institute for Highway Safety; University of North Texas Health Science Center; Center for Brain Cognitive Imaging; Virginia Tech Transportation Institute; U.S. Department of Transportation; Department of Legislative Services

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