HB 544

Department of Legislative Services
2014 Session

FISCAL AND POLICY NOTE

House Bill 544 (Delegate Malone, *et al.*)
Environmental Matters

Motor Vehicles - Wireless Communication Devices - Prohibited Acts

This bill expands the prohibition against the use of a wireless communication device for all drivers younger than age 18 to operating a motor vehicle in the travel portion of the roadway. The bill also 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 and specifies that a provisional license holder age 18 or older may not use a handheld telephone in the travel portion of the roadway. For fully licensed adult drivers, the prohibition against using the driver's hands to use a handheld telephone, except as specified, is expanded to operating a motor vehicle on the travel portion of the roadway, rather than while the motor vehicle is in motion.

Fiscal Summary

State Effect: Minimal general fund revenue increase from expanding the applicability of the offenses covered by the bill. Enforcement can be handled with existing resources.

Local Effect: Enforcement can be handled with existing resources. Revenues are not affected.

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).

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 against using a handheld telephone applies to the holder of a learner's instructional permit or provisional driver's license who is age 18 or older. Any other adult driver of a motor vehicle that is in motion may only use the driver's hands to initiate or terminate a wireless telephone call or to turn the handheld telephone on or off; otherwise, the driver may not use a handheld telephone. 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.

For a first offense, the violator is subject to a maximum fine of $75. 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 offense, the maximum fine is $125. For a third or subsequent offense, the maximum fine is $175. Points may not be assessed against the violator unless the offense contributes to an accident. In that event, three points are assessed.

Background: *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 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.

For more information about distracted driving in Maryland and other states, please see the **Appendix – Distracted Driving**.

State Fiscal Effect: General fund revenues increase minimally in due to the expansion of the prohibition. A reliable estimate of the magnitude of the revenue increase cannot be made due to the unavailability of data regarding when drivers commit the offenses covered by the bill while in the travel portion of the roadway, compared to only while the vehicle is in motion. The Department of Legislative Services advises, however, that the revenue impact is not likely to be significant. 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: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, The Wireless Association, National Highway Traffic Safety Administration, Governors Highway Safety Association, 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, University of Maryland – Baltimore – STAR ORC – National Study Center for Trauma and EMS, Department of Legislative Services

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Appendix – Distracted Driving

According to The Wireless Association (CTIA) in 2012, for the first time in U.S. history, the number of wireless device subscriptions (326.4 million) exceeded the U.S. population (315.5 million) for a penetration of 102.2%. In 2012, more than 2 trillion text messages were sent and more than 2 trillion voice minutes were used. The Insurance Institute of Highway Safety estimates that, at any given daylight moment, 660,000 people in the United States are using wireless devices while driving.

National surveys on distracted driving conducted by the National Highway Traffic Safety Administration (NHTSA) and other organizations appear to indicate a major disconnect between driving behaviors and the comprehension of risky behaviors that stem from the use of electronic devices. In other words, surveyed drivers generally believe it is dangerous for *other* drivers to make phone calls or text while driving. However, most drivers believe that they, themselves, can manage to make calls or text and still drive safely.

For example, in the 2012 National Survey on Distracted Driving Attitudes and Behaviors released in April 2013 by NHTSA, 28% of respondents admitted answering incoming calls on all or almost all driving trips. Of those who reported using a cell phone while driving, 58% reported that they *answer* and drive simultaneously, while 10% admitted to *sending* text messages or emails while driving – on at least some driving trips. An additional 11% reported sending text messages or emails on rare occasions. About 14% of respondents admitted to reading text messages and emails while driving. Of those who reported sending text messages or emails, 44% said they waited until stopped at a red light before sending; 35% drove while sending text messages and emails. Conversely, 8% of surveyed drivers reported asking a passenger to send the text or email, 7% reported using voice commands to send text messages or emails, and 6% reported that they pulled off the road to send a text or email.

Driver Distraction – A Definition: Distracted driving generally means any nondriving activity which has the potential to cause the driver to divert his or her attention away from the task of driving. This could mean activities as routine as changing a radio station, eating a sandwich, or inserting a compact disc into the car's player or it could mean talking to other passengers, focusing on an unrestrained pet, adjusting car mirrors as well as talking on a cell phone, texting, perusing the Internet, or otherwise using an electronic device. NHTSA has focused attention on the four main types of driving distraction:

- visual – taking eyes off the road;
- auditory – hearing noise or sounds that divert driver attention;

- manual – taking hands off the steering wheel; and
- cognitive – focusing attention on things other than the primary task of driving.

While any nondriving task that distracts a driver can endanger the safety of drivers, passengers, and pedestrians, enforcement efforts in Maryland and other states have focused on the dangers resulting from the use of handheld cell phones for phone conversations, texting, and other electronic communication activities. In Maryland, a distracted driving crash is defined by the Department of State Police as at least one driver in the crash either failing to pay full-time attention to the driving task or using a cell phone while driving. Texting while driving is regarded as especially dangerous since it requires a driver to be distracted visually, manually, and cognitively (however, many cell phones allow the sending and reading of text messages by voice so distraction by voice command texting could be limited to visual and cognitive). Handheld cell phone use is also regarded as dangerous since it may require (unless the phone allows voice commands to initiate and end calls) manual distraction as well as auditory and cognitive diversion of the driver's attention.

The National Transportation Safety Board (NTSB) regards nonemergency driver engagement with electronic devices as so dangerous that it has recommended that states enact legislation to prohibit the nonemergency use, while driving, of all portable electronic devices (unless designed to support the driving task) including *hands-free* cell phones. To date, no state has adopted the NTSB recommendation.

Prevalence of Distracted Driving in Maryland: The Maryland Highway Safety Office, which is part of the Motor Vehicle Administration in the Maryland Department of Transportation, reports that, during the five-year span from 2008 through 2012, an average of 229 fatal crashes and 19,790 crashes with injuries annually involved at least one distracted driver. On average, during the same five-year period, 92,418 crashes occurred on Maryland roads annually. The proportion of distracted driving-related crashes exceeds one-fifth of total traffic crashes.

Exhibit 1 shows the prevalence of distracted driving crashes by county in Maryland when compared to vehicle miles traveled for the five-year period of 2008 through 2012. Distracted driving crashes appear to be most likely to occur in urban areas with high population densities. As shown in the exhibit, Baltimore City and Prince George's and Baltimore counties had the highest percentages of distracted driving-related crashes when compared to the percentages of vehicle miles traveled in those jurisdictions. Conversely, the counties of Anne Arundel, Frederick, and Howard had the lowest percentages of distracted driving-related crashes when compared to the percentages of vehicle miles traveled in those jurisdictions.

Exhibit 1
Distracted Driving Crashes Compared to Vehicle Miles Traveled
2008-2012*

Jurisdiction	2008	2009	2010	2011	2012	% of Statewide Crashes	% of Statewide VMT	Over (+) Under (-) Representation
Baltimore	6,508	6,126	5,832	6,166	6,560	11.81	6.13	5.68
Prince	10,057	9,593	9,281	9,259	8,771	17.37	15.61	1.76
Baltimore	9,539	8,483	8,101	8,166	8,338	15.65	14.78	0.87
Charles	1,577	1,589	1,593	1,546	1,539	2.98	2.22	0.76
Montgomery	7,642	7,825	7,425	7,262	6,878	13.72	13.00	0.72
Wicomico	1,277	1,297	1,176	1,236	1,172	2.28	1.75	0.53
St. Mary's	980	981	1,023	1,007	1,073	1.97	1.49	0.48
Worcester	777	807	784	767	848	1.53	1.29	0.24
Calvert	761	800	752	700	747	1.40	1.33	0.07
Carroll	1,198	1,291	1,115	1,156	1,180	2.20	2.24	(0.04)
Kent	124	132	109	121	112	0.22	0.36	(0.04)
Somerset	183	206	169	176	169	0.33	0.50	(0.17)
Talbot	547	506	445	471	478	0.89	1.08	(0.19)
Dorchester	291	255	243	234	250	0.46	0.69	(0.23)
Harford	2,401	2,272	2,206	2,235	1,987	4.09	4.32	(0.23)
Caroline	236	268	227	221	229	0.43	0.67	(0.24)
Cecil	1,167	1,174	1,176	1,178	1,030	2.15	2.40	(0.25)
Garrett	314	308	280	265	223	0.49	0.94	(0.45)
Allegany	448	447	409	394	365	0.74	1.45	(0.71)
Queen	447	479	498	432	449	0.88	1.65	(0.77)
Washington	1,623	1,497	1,423	1,409	1,463	2.73	3.61	(0.88)
Anne	5,122	5,124	4,768	5,008	4,679	9.20	10.14	(0.94)
Frederick	1,930	1,902	1,548	1,608	1,797	3.15	5.33	(2.18)
Howard	1,787	1,810	1,702	1,752	1,799	3.34	7.03	(3.69)

* This table provides the number of crashes, in a county or Baltimore City, for the distracted driving program area that occurred over the designated five-year period. The percentage of statewide crashes is determined by comparing each jurisdiction's five-year average number of crashes with the average statewide number of crashes over the same period. This result is then compared to the jurisdiction's percentage of the statewide vehicle miles traveled (VMT) in 2012. The difference between these two numbers (last column) reveals whether the jurisdiction experienced a proportionately higher or lower number of crashes than is expected given its percentage of VMT. A positive number indicates a higher proportion of crashes is occurring with distracted driving as a causative factor. A negative number indicates that the jurisdiction experienced a lower number of crashes than expected, given VMT.

Source: University of Maryland, Baltimore – STAR ORC – National Study Center for Trauma and EMS

Maryland Enforcement Activity: Since 2005, Maryland has prohibited any individual younger than age 18 from using a wireless communication device while operating a motor vehicle (Chapters 543 and 544 of 2005). The use of such a device to contact 9-1-1 in an emergency is exempt from the prohibition. As of 2009, Maryland prohibited the writing and sending of text messages while operating a motor vehicle (Chapters 194 and 195 of 2009). In 2011, Chapters 471 and 472 expanded the prohibition to include the reading of text messages. As of 2010, Maryland specifically prohibited school bus drivers and provisional licensees who are age 18 or older from using a handheld telephone while operating a motor vehicle. All other drivers were authorized by the same law to use a hands-free telephone, but they could not operate the telephone with hands unless it was only to dial a number or to turn the device on or off (Chapter 538 of 2010).

Except for the offenses of reading, writing, or sending a text while driving, which were enacted as primary offenses, the offenses that prohibit the use of either handheld telephones or wireless communication devices were originally enacted as subject to secondary enforcement only. An officer could only enforce these violations if the officer had detained the driver for another suspected violation of Maryland law. According to data from the Administrative Office of the Courts, the total number of reported citations for handheld telephone violations with secondary enforcement in fiscal 2013, as shown in **Exhibit 2**, was similar, but somewhat lower than the number of reported citations for fiscal 2012. The number of texting citations, however, did show an increase, not only in the total, but also in those citations in which the offender chose to admit guilt and prepay the fine.

Enforcement of the offenses for use of handheld telephones or wireless communication devices was expanded to primary enforcement as of October 1, 2013, by Chapters 637 and 638 of 2013. Accordingly, an officer may detain a driver for the suspected unlawful use of a handheld phone or wireless communication device without observing or suspecting any other unlawful behavior. Chapters 637 and 638 also increased the penalties applicable to school bus drivers and adult drivers for handheld phone offenses from a maximum of $40 to a maximum of $75 for a first-time offense. The maximum penalties for a second offense increased from $100 to $125, and the law established a maximum penalty of $175 for a third or subsequent offense. **Exhibit 3** shows citations issued for handheld telephone offenses (information on primary enforcement of the wireless communication device offense is not readily available) from October 1 through December 31, 2013, after the expansion to primary enforcement.

Exhibit 2
Maryland Electronic Device Driving Citations
Fiscal 2012-2013

Offense While Driving	Enforcement Authority	Open	Prepaid	Trial	Total Citations
School Bus Driver w/Handheld Device					
Fiscal 2013	Secondary	3	29	9	**41**
Fiscal 2012	Secondary	8	34	14	**56**
Permit/Prov. License Holder – Adult w/Handheld Device					
Fiscal 2013	Secondary	16	65	30	**111**
Fiscal 2012	Secondary	36	61	26	**123**
Minor w/Wireless Communication Device					
Fiscal 2013	Secondary	4	3	4	**11**
Fiscal 2012	Secondary	5	3	3	**11**
Fully Licensed Adult w/Handheld Device					
Fiscal 2013	Secondary	548	5,213	1,132	**6,893**
Fiscal 2012	Secondary	1,175	5,319	854	**7,348**
Reading, Writing, Sending Text Messages					
Fiscal 2013	Primary	184	649	341	**1,174**
Fiscal 2012*	Primary	175	368	149	**692**

*The existing prohibition was expanded to encompass reading a text message and its application was broadened to vehicles in the travel portion of the roadway (rather than those in motion) on October 1, 2011.

Note: The enforcement authority for many of these offenses changed from secondary to primary, beginning in fiscal 2014.

Source: Administrative Office of the Courts

Exhibit 3
Primary Enforcement – Handheld Telephone Offenses
October 1 – December 31, 2013

Handheld Telephone Offense By	Enforcement Authorization	Open	Prepaid	Trial	Total
School Bus Driver	Primary	10	6	1	**17**
Provisional Licensed Adult Driver	Primary	56	28	5	**89**
Fully Licensed Adult Driver	Primary	3,185	4,210	338	**7,733**

Source: Administrative Office of the Court

The shift to primary enforcement, which became effective in the second quarter of fiscal 2014, has led to a significant increase in the number of handheld cell phone citations issued. For school bus drivers, a total of 41 citations were issued for handheld phone offenses in fiscal 2013. Since primary enforcement became effective in the second quarter of fiscal 2014, a total of 17 citations have been issued. That exceeds the number of citations issued in a typical quarter, assuming uniform enforcement. For provisionally licensed adult drivers, a total of 111 citations were issued in fiscal 2013. In a typical quarter, assuming uniform enforcement, about 28 citations would be issued. However, since primary enforcement became effective, a total of 89 citations have been issued to provisionally licensed adult drivers – all in the second quarter of fiscal 2014. The difference in primary enforcement is most telling with regard to fully licensed adult drivers, however. In fiscal 2013, a total of 6,893 citations were issued for handheld cell phone offenses. In just one quarter under primary enforcement, the number of citations to adult drivers for driving with handheld cell phones (7,733) has already exceeded the entire number issued for fiscal 2013.

Other States: According to the Governors Highway Safety Association (GHSA), as of January 2014, 12 states (California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, New Jersey, New York, Oregon, Washington, and West Virginia) and the District of Columbia prohibit the use of handheld phones by all drivers while operating a motor vehicle and authorize primary enforcement. No state completely prohibits the use of cell phones by regularly licensed, adult drivers. Also, 20 states (Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, North Carolina, Rhode Island, Tennessee, Texas, Utah, and Virginia) and the District of Columbia prohibit the operators of school vehicles that carry passengers from using a wireless telephone device while driving and authorize primary enforcement.

GHSA also reports that 41 states and the District of Columbia prohibit all drivers from texting while driving. In 37 states and the District of Columbia, primary enforcement is authorized. In four states (Florida, Iowa, Nebraska, and Ohio), secondary enforcement only is authorized. No laws prohibiting all drivers from texting while driving have been enacted in Arizona, Mississippi, Missouri, Montana, New Mexico, Oklahoma, South Carolina, South Dakota, or Texas. As noted earlier, some of these states, however, have enacted provisions limiting or prohibiting texting by specified populations (for example, novice drivers) or in certain situations (for example, school or construction zones).