

Department of Legislative Services  
2011 Session

FISCAL AND POLICY NOTE

House Bill 196

(Delegate Malone, *et al.*)

Environmental Matters

Judicial Proceedings

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**Motor Vehicles - Use of Text Messaging Device While Driving - Prohibited Acts**

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This bill expands the prohibition on text messaging by prohibiting a driver from using a text messaging device to read a text or electronic message while operating a motor vehicle in the travel portion of the roadway. The bill also applies the prohibition against writing or sending to electronic messages; repeals the application of the prohibition to when the motor vehicle is in motion; and, instead, specifies that the text messaging prohibition applies to motor vehicles in the travel portion of the roadway. A violator is guilty of a misdemeanor and subject to a maximum fine of \$500.

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**Fiscal Summary**

**State Effect:** Minimal general fund revenue increase from the penalty provision applicable to this offense. The increase in the District Court caseload is expected to be minimal and can be handled with existing resources.

**Local Effect:** Enforcement can be handled with existing resources.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A “text messaging device” means a handheld device used to send a text message or an electronic message via a short message service, wireless telephone service, or electronic communication network.

A driver is prohibited from using a text messaging device to write or send a text message while operating a motor vehicle in motion or in the travel portion of the roadway. A violator is guilty of a misdemeanor and subject to a maximum fine of \$500. The

prohibition does not apply to the use of a global positioning system or the use of a text messaging device to contact a 9-1-1 system. A violator is subject to an assessment of one point against the driving record. The prepayment penalty assessed by the District Court is \$70, or \$110 and three points if the violation contributes to an accident.

Except to contact a 9-1-1 system in an emergency, a minor holding a learner's permit or provisional license is prohibited from using a wireless communication device while operating a motor vehicle. A wireless communication device includes a text messaging device for this prohibition. The prohibition on novice drivers is only enforceable as a secondary action. A violator is subject to a maximum fine of \$500 and assessment of one point against the driving record. The prepayment penalty assessed by the District Court is \$70, or \$110 and three points if the violation contributes to an accident. A violator is also subject to license suspension for up to 90 days by the Motor Vehicle Administration.

A person is guilty of negligent driving if the person drives in a careless or imprudent manner that endangers property or human life. A negligent driving violation requires the assessment of one point against the driving record and is a misdemeanor subject to a maximum fine of \$500. The prepayment penalty assessed by the District Court for this offense is \$140. If the offense contributes to an accident, the prepayment penalty increases to \$280 and three points are assessed against the driver's license.

**Background:** According to the Governors Highway Safety Association (GHSA), 30 states and the District of Columbia specifically prohibit driving while texting. Washington was the first state to enact such a law in May 2007. In addition to Maryland, 25 other states and the District of Columbia authorize primary enforcement of their text-messaging bans. Four states authorize secondary enforcement only. Many local jurisdictions have also established texting while driving bans or cell phone restrictions within their limits.

General statewide restrictions on cell phone use while in a motor vehicle may effectively make driving while texting illegal. California, Connecticut, Delaware, Maryland, New Jersey, New York, Oregon, Washington, and the District of Columbia prohibit all drivers from using handheld phones while operating motor vehicles. Since texting requires a cell phone to be held in the hand, these laws appear to prohibit that activity. Twenty-eight states and the District of Columbia specifically prohibit wireless communication device use by younger drivers. Among those states, Arkansas, California, Colorado, Maine, Massachusetts, North Carolina, Oregon, Rhode Island, Vermont and Virginia prohibit all drivers younger than age 18 from using any type of wireless communication device while driving. The other jurisdictions, including Maryland, limit the prohibition against wireless communication devices to drivers with instructional

permits or provisional licenses who are younger than age 18. In some states, the prohibition targeting young drivers applies to drivers up to age 21.

Experts estimate that more than 285 million wireless phone users are in the United States. In 2008, about 1.3 billion text messages were sent, an average of 110 million text messages per month. It is unknown how many of these messages were sent while people were operating motor vehicles, but driving while texting has been a growing trend for several years. A study by Nationwide Insurance estimated that 20% of all drivers send or receive text messages. A Zogby poll of drivers between the ages of 18 and 24 revealed that 66% confessed to texting while driving.

Studies of the effects of texting on driving have shown conflicting results. Researchers at Virginia Tech Transportation Institute have become well known for their “real world” studies documenting the detrimental effects of texting and other electronic device distractions on driving. In September 2010, study results from researchers at the University of North Texas Health Science Center asserted that talking and texting on cell phones while driving has killed 16,000 people from 2001 to 2007, and that the proportion of deaths attributable to these device distractions has increased although the total number of traffic fatalities in the United States has decreased in recent years. However, in the same month, the Highway Loss Data Institute released a 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. Meanwhile, the U.S. Department of Transportation has made the elimination of texting while driving a major priority and has held summits on the dangers of distracted driving in 2009 and 2010.

While at least 33 states and the District of Columbia 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, recently proposed federal legislation would require all states to collect data about distractions to qualify for certain federal funding.

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### **Additional Information**

**Prior Introductions:** HB 192 of 2010, a similar bill, passed the House and Senate, as amended, and was referred to conference committee where differences were not reconciled.

**Cross File:** SB 424 (Senators Brochin and Forehand) - Judicial Proceedings.

**Information Source(s):** Calvert and Montgomery counties, Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, Governors Highway Safety Association, Reuters News Service, *Wikipedia*, 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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