

Department of Legislative Services  
2013 Session

**FISCAL AND POLICY NOTE**

Senate Bill 193

(Senator King, *et al.*)

Judicial Proceedings

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**Vehicle Laws - Prohibition on Handheld Telephone Use - Primary Offense if Child Is Passenger**

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This bill repeals the limitation of secondary enforcement only against the use of a fully licensed adult driver's hands to use a handheld telephone, other than to initiate or terminate a call or turn the device on or off, if a child younger than age eight is a passenger in the motor vehicle. Accordingly, law enforcement officers may detain and issue a citation to a driver for this offense without having to witness or suspect another violation of the Maryland Annotated Code.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues from the application of primary enforcement to this offense. Enforcement 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:** 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:** According to the University of Maryland Shock, Trauma and Anesthesiology Research Center, 7,894 citations were issued in 2011 to drivers in Maryland for using a handheld cell phone while operating a motor vehicle. In 2012, as of August 1, 4,332 citations had been issued for the same offense. It is unknown how many of the cited drivers had a child passenger younger than age eight in the motor vehicle at the time of the offense.

*Cell Phones and Driving – Nationwide Developments:* According to 2012 estimates of the Cellular Telecommunications Industry Association, there are more than 321.7 million wireless subscribers in the United States. The Insurance Institute for Highway Safety (IIHS) estimates that, at any given moment, about 660,000 drivers in the United States are holding handheld cell phones while driving. In December 2011, the National Transportation Safety Board 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 applied to hands-free as well as handheld devices.

According to the Governors Highway Safety Association, 10 states (California, Connecticut, Delaware, 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. Maryland and West Virginia authorize secondary enforcement, while the other states and the District of Columbia authorize primary enforcement. As of July 2013, West Virginia will authorize primary enforcement.

In the *National Phone Survey on Distracted Driving Behaviors* released in December 2011 by the National Highway Transportation Safety Administration, (NHTSA) it was reported that 23% of respondents admitted to answering incoming calls on all driving trips while 27% reported answering incoming calls on most driving trips. Far fewer respondents (5%) reported making calls while on all driving trips, and 10% reported making calls on most driving trips. Of those who reported using a cell phone while driving, 66% reported that they answer and drive simultaneously. Close to one-half of the respondents (45%) reported holding the phone in their hands while driving. Only 14% of surveyed drivers claimed that they never make calls while driving. More than one-half of surveyed drivers (54%) claimed that talking on a phone while driving made no difference in their driving abilities. When asked about situations in which drivers would never use a phone, only 1.5% of those surveyed reported that, with a baby or child as a passenger, they would never use a phone while driving.

*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 IIHS 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 through 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.

**State Fiscal Effect:** General fund revenues may increase minimally due to the authorization for primary enforcement when a passenger younger than age eight is in the motor vehicle, but a reliable estimate of the magnitude of the increase cannot be made.

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### **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, University of Maryland School of Medicine, Cellular Telecommunications Industry Association, 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, U.S. Department of Transportation, Department of Legislative Services

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