

**Department of Legislative Services**  
2013 Session

**FISCAL AND POLICY NOTE**

House Bill 759 (Delegate Malone)  
Environmental Matters

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**Vehicle Laws - Distracted Driving - Prohibition**

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This bill establishes the offense of distracted driving. The offense is a misdemeanor, punishable by a maximum fine of \$500. It is not considered a moving violation, however, for the purpose of assessing points. A police officer may only enforce this offense as a secondary action when the driver is detained for another violation of the Maryland Annotated Code.

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**Fiscal Summary**

**State Effect:** Minimal general fund revenue increase from the penalty provision applicable to this offense under the Maryland Vehicle Law. 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**

**Bill Summary:** If a person drives a motor vehicle in an inattentive manner, resulting in the unsafe operation of the motor vehicle and the inattention is caused by the person engaging in any “preoccupying activity” that distracts the person’s attention, that person is guilty of distracted driving.

A “preoccupying activity” includes reading or writing; performing personal grooming; using a wireless communications device; adjusting cargo; eating, drinking, or smoking; physically attending to another passenger; and operating or observing a video display.

**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 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/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 prohibition. 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.

*Text Messaging:* 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.

Under the statewide ban on texting while driving, a driver is prohibited from using a text messaging device to read, write, or send a text or electronic message while operating a motor vehicle 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.

*Negligent Driving:* While no State statutory provision specifically prohibits “distracted driving,” a person is deemed 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 must be assessed against the driver’s license. During fiscal 2012, the District Court processed 21,754 citations for negligent driving. Of these, 2,645 citations were disposed of by prepaying the penalty, 12,139 went to trial and 2,956 remained open.

**Background:**

*Distracted Driving Enforcement in Maryland:* Except for the offense of reading, writing or sending a text while driving, the offenses that prohibit use of either a handheld telephone or a wireless communication device are secondary enforcement offenses only. The District Court has documented the issuance of citations that took place in fiscal 2012, as shown in **Exhibit 1**.

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**Exhibit 1**  
**Electronic Device and Driving Citations**  
**Fiscal 2012**

| <b><u>Offense While Driving</u></b>               | <b><u>Enforcement Type</u></b> | <b><u>Open</u></b> | <b><u>Prepaid</u></b> | <b><u>Trial</u></b> | <b><u>Total Citations</u></b> |
|---|--------------------------------|--------------------|-----------------------|---------------------|-------------------------------|
| Reading, writing, sending text message            | Primary                        | 175                | 368                   | 149                 | <b>692</b>                    |
| Minor w/wireless device                           | Secondary                      | 5                  | 3                     | 3                   | <b>11</b>                     |
| Permit/prov. license holder<br>w/handheld phone   | Secondary                      | 36                 | 61                    | 26                  | <b>123</b>                    |
| School bus driver<br>w/handheld phone             | Secondary                      | 8                  | 34                    | 14                  | <b>56</b>                     |
| Adult driver using hands to use<br>handheld phone | Secondary                      | 1,175              | 5,319                 | 854                 | <b>7,348</b>                  |

Source: District Court, Department of Legislative Services

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*National 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.

In September 2009 and 2010, national summits were convened to discuss the dangers of distracted driving. Each summit included participation by federal and state transportation officials, state legislators and other elected officials, law enforcement personnel, and academics. As a starting point, the 2009 summit defined “distracted driving” as “any nondriving activity a person engages in that has the potential to distract him or her from the primary task of driving and increases the risk of crashing.”

A determination was made that there are three main types of driving distraction:

- visual – taking your eyes off the road;
- manual – taking your hands off the wheel; and
- cognitive – taking your mind off the primary task of driving.

There was a consensus at the 2009 summit that, while all distractions can endanger driver safety, texting while driving is the most alarming because a driver has to engage in all three types of distraction to send and receive text messages.

In its most recent report on motor vehicle accidents and fatalities, the National Highway Traffic Safety Administration (NHTSA) reported that in 2010, 3,092 people were killed and an estimated 416,000 were injured in crashes involving at least one form of driver distraction. Across the country, 18% of injury crashes in 2010 were reported as distraction-affected crashes. A 2007 Nationwide Mutual Insurance survey of 1,500 drivers reported that more than 80% admitted to changing clothes, steering with a foot, painting nails, or shaving while driving.

In the *National Phone Survey on Distracted Driving Attitudes and Behaviors*, released by NHTSA in December 2011 (the first such nationwide survey on distracted driving) responses indicated that the driving population tends to underestimate the danger of using a cell phone or texting while driving, and a significant proportion do not hesitate to talk on a cell phone or text while driving. Ironically, while most drivers are willing to answer a phone call and many will text while driving, almost all of these same respondents (about 90%) reported that they would feel very unsafe as a passenger if the driver were sending or receiving text messages while driving. About one-third of respondents said they would feel very unsafe if the driver were using a handheld cell phone while driving. As a result, while most survey respondents do not believe that their own driving skills are affected when they use electronic devices, they feel very unsafe as passengers when the driver is engaging in similar behaviors.

One of the most frequently cited studies on the impact of distractions on driving was a 2006 study of real world driver behavior, completed by NHTSA and the Virginia Tech Transportation Institute, which concluded that driver inattention is the leading factor in most crashes and near-crashes. The study tracked drivers of 100 vehicles for more than one year. The vehicles were equipped with video and sensor devices that provided more than 42,000 hours of data. During the study, the drivers were involved in 82 crashes, 761 near-crashes, and 8,295 critical incidents. The study 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 resulting from listening or talking. Some distracting behaviors and their risk associated with accidents according to the study follow:

## Distracting Driving Behavior

## Crash/Near-crash Increase Factor

|  |           |
|--|-----------|
| Reaching for moving object               | 9 times   |
| Looking at external object               | 3.7 times |
| Reading                                  | 3 times   |
| Applying makeup                          | 3 times   |
| Dialing handheld device*                 | 3 times   |
| Talking or listening on handheld device* | 1.3 times |

\*Although dialing was found to be more dangerous initially than talking or listening, because talking or listening occurs more often and over a longer period of time, the number of accidents caused by talking or listening was similar to the number of accidents caused by dialing alone.

Maine, New Hampshire, and Utah have enacted laws that either generally prohibit distracted driving or prohibit a range of specified behaviors while driving that are defined as distracting.

California, Connecticut, Delaware, Maryland, Nevada, New Jersey, New York, Oregon, Washington, West Virginia, and the District of Columbia prohibit all drivers from using handheld phones while operating motor vehicles. The prohibition is subject to primary enforcement in the District of Columbia and all of these states except for Maryland and West Virginia. The prohibition in West Virginia will be subject to primary enforcement as of July 2013.

Provisions in Connecticut and the District of Columbia that prohibit the use of handheld phones while operating a motor vehicle also prohibit engaging in distracting activity that may affect the safe operation of a motor vehicle. The District of Columbia and 39 states, including Maryland, ban text messaging for all drivers. Three states (Iowa, Nebraska, and Virginia) authorize secondary enforcement only. The other states and the District of Columbia authorize primary enforcement of the ban. Restrictions on the placement of televisions or video devices or their prohibition in motor vehicles are the subject of laws in at least 38 states, including Maryland.

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## **Additional Information**

**Prior Introductions:** HB 552 of 2012 was heard in the House Environmental Matters Committee but received no further action. HB 1288 of 2011 received an unfavorable report from the House Environmental Matters Committee. SB 294/HB 299 of 2010 received unfavorable reports from the Senate Judicial Proceedings and House Environmental Matters committees, respectively. HB 236 of 2010 was withdrawn before being heard by the House Environmental Matters Committee. SB 630 of 2009 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 564, was heard in the House Environmental Matters Committee but received no

further action. A similar bill, HB 1127 of 2007, was heard by the House Environmental Matters Committee but received no further action. Another similar bill, HB 30 of 2006, received an unfavorable report from the House Environmental Matters Committee.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Governors Highway Safety Association, National Highway Traffic Safety Administration, National Transportation Safety Board, Virginia Tech Transportation Institute, Department of Legislative Services

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