

Department of Legislative Services
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 339

(Senator Robey, *et al.*)

Judicial Proceedings

Environmental Matters

**Motor Vehicles - Use of Wireless Communication Device - Prohibited Acts,
Enforcement, and Penalties**

This bill authorizes primary enforcement of the prohibitions against the use of (1) a wireless communication device by a minor operating a motor vehicle; (2) a handheld telephone by an adult driver while operating a motor vehicle with a provisional license or learner's permit; (3) a handheld telephone by an operator of a school vehicle that is carrying passengers and in motion; and (4) the fully licensed driver's hands to use a handheld telephone, while the vehicle is in motion, except as specified. The provisions limiting enforcement to a secondary action are repealed.

For adult drivers and school bus operators, the bill increases the maximum fine for a first offense from \$40 to \$75. For a second offense, the fine increases from \$100 to a maximum of \$125. The bill establishes a maximum penalty of \$175 for a third or subsequent offense and also specifies that points may not be assessed against the driving record of any offender unless the violation contributes to an accident.

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.

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 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:* 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. Through the first seven months of 2012 (as of August 1), 4,332 citations had been issued for the same offense. All handheld phone offenses in Maryland are subject to secondary enforcement only. The Administrative Office of the Courts reports that the number of recorded convictions continued to grow in fiscal 2012, as shown in **Exhibit 1**, and was somewhat higher than the number of recorded convictions for fiscal 2011.

Exhibit 1
Electronic Device and Driving Citations
Fiscal 2012

| <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 | 14 | 56 |
| Permit/Prov. License Holder – Adult w/ Handheld Device | Secondary | 36 | 61 | 26 | 123 |
| Minor w/ Wireless Communication Device | Secondary | 5 | 3 | 3 | 11 |
| Fully Licensed Adult w/ Handheld Device | Secondary | 1,175 | 5,319 | 854 | 7,348 |

Source: Administrative Office of the Courts

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.

In the 2012 *National Survey on Distracted Driving Attitudes and Behaviors* released in April 2013 by the National Highway Transportation Safety Administration, (NHTSA) it was reported that 28% of respondents admitted to 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. Slightly more than half of respondents in states with laws banning some form of cell phone use while driving (52%) thought a driver who regularly talks on a cell phone while driving was likely to get a ticket in the future. About 44% of respondents believed it was unlikely that a driver would be ticketed.

According to the Governors Highway Safety Association (GHSA), as of March 2013, 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. 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.

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.

Accident Documentation: While GHSA 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 in accordance with *Model Minimum Uniform Crash Criteria* guidelines, developed by NHTSA, to qualify for certain federal funding.

State Fiscal Effect: General fund revenues increase due to the increase in the penalty 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 primary enforcement doubles the number of adult handheld first offenses over fiscal 2012 levels (which currently carry a maximum fine of \$40) with a new penalty of \$75, then general fund revenues could increase by more than \$825,000 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 additional 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: SB 217 of 2012 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 104, passed the House but then received an unfavorable report from the Senate Judicial Proceedings Committee. HB 222 of 2011 passed the House as amended, but it received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 753 (Delegate Malone, *et al.*) - Environmental Matters.

Information Source(s): Judiciary (Administrative Office of the Courts), 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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