

# SENATE BILL REPORT

## SB 5289

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As Reported by Senate Committee On:  
Transportation, February 21, 2017

**Title:** An act relating to updating the distracted driving infraction.

**Brief Description:** Modifying the infraction of and penalties for distracted driving.

**Sponsors:** Senators Rivers, Liias, Miloscia, Carlyle and Kuderer.

**Brief History:**

**Committee Activity:** Transportation: 2/07/17, 2/21/17 [DPS, DNP, w/oRec].

**Brief Summary of Substitute Bill**

- Creates a new traffic infraction, beginning January 1, 2018, that prohibits a person from using a personal electronic device while driving a motor vehicle on a public highway.
- Applies to holding a device in either hand, and also the use of a hand or finger to compose, send, read, view, access, browse, transmit, save, or retrieve email, text messages, instant messages, photographs, or other electronic data.

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Substitute Senate Bill No. 5289 be substituted therefor, and the substitute bill do pass.

Signed by Senators King, Chair; Hobbs, Ranking Minority Member; Liias, Assistant Ranking Minority Member; Cleveland, O'Ban, Saldaña, Takko and Van De Wege.

**Minority Report:** Do not pass.

Signed by Senators Sheldon, Vice Chair; Hawkins, Walsh and Wilson.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Ericksen and Fortunato.

**Staff:** Kim Johnson (786-7472)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** It is a traffic infraction for any driver over 18 years of age who is operating a moving motor vehicle (1) to hold a wireless communications device to their ear, or (2) to send, read, or write a text message; unless the person is using a hands-free device. The two different infractions have some of the same exemptions, which include when a driver is:

- operating an authorized emergency vehicle; or
- reporting illegal activity, summoning medical or emergency help, or using the device to prevent injury to a person or property.

A violation of the provisions listed above have an associated base penalty of \$48 and additional statutory assessments of \$88 for a total penalty of \$136. The infraction does not become part of the driver's record and is not available to insurance companies or employers.

Any driver holding an instruction permit or any intermediate driver's license, drivers that are at least 16 years of age and under 18 years of age, operating a moving motor vehicle while using a wireless communications device for any purpose other than to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property, is guilty of a traffic infraction. A violation of this provision has an associated base penalty of \$48 and additional legislative assessments of \$88 for a total penalty of \$136.

The state law related to drivers holding a wireless communication device to their ear supersedes any local laws regulating the use of wireless devices in motor vehicles.

A Health Impact Review of this legislation was requested and can be found at the Washington State Board of Health's website, <http://sboh.wa.gov/OurWork/HealthImpactReviews/index.htm>, as soon as it is available.

**Summary of Bill (First Substitute):** Beginning January 1, 2018, a person who uses a personal electronic device while driving a motor vehicle on a public highway is guilty of a traffic infraction. The first violation of the infraction carries a base penalty of \$48 and a total penalty of \$136. Second and subsequent violations of this infraction double the base penalty to \$96, resulting in a total penalty of approximately \$235.

Uses means:

- holding a personal electronic device in either hand;
- using your hand or finger to compose, send, read, view, access, browse, transmit, save, or retrieve email, text messages, instant messages, photographs, or other electronic data; and
- watching video on a personal electronic device.

However, the minimal use of a finger to activate, deactivate, or initiate a function of a device is not precluded.

A personal electronic device means any portable electronic device that is capable of wireless communication or electronic data retrieval, but does not include two-way radio, citizen band radio, or amateur radio equipment.

Driving means operating a motor vehicle on a public highway, and includes when the vehicle is temporarily stopped because of traffic or a stop light or stop sign. Driving does not include

when the vehicle has pulled over and stopped on the side of an active roadway and can remain stationary safely.

The following actions are exempted from the infraction:

- a driver who is summoning emergency services;
- a driver operating an authorized emergency vehicle;
- a transit system employee using a system for time-sensitive relay communication with transit dispatch services; and
- a commercial motor vehicle driver who uses a device within the scope of an individual's employment as allowed by federal law.

The state law related to drivers using a personal electronic device supersedes any local laws regulating the use of wireless devices in motor vehicles.

The existing statutes related to cell phone and texting infractions and the applicable exemptions covering to drivers over 18 years of age are repealed as of January 1, 2018.

It is a traffic infraction to drive dangerously distracted. Dangerously distracted means a person who engages in any activity not related to the actual operation of a motor vehicle in a manner that interferes with the safe operation of such motor vehicle on any highway. The new infraction may only be enforced as a secondary action when the driver has been detained for a suspected violation of a separate traffic infraction. The base penalty for the infraction is \$30; the base penalty must be deposited into the Distracted Driving Prevention account and may only be appropriated for programs dedicated to reducing distracted driving and improving driver education on distracted driving.

**EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (First Substitute):**

- Adds an exemption for persons operating an authorized emergency vehicle.
- Exempts two-way radios, citizen band radios, and amateur radio equipment from the definition of personal electronic device.
- Creates a new traffic infraction for driving dangerously distracted, which can only be enforced as a secondary action, and dedicates the base penalty monies to programs dedicated to reducing distracted driving and improving driver education on distracted driving.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2018.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: There are studies that have found that our electronic devices are the third most addictive things in our lives right now. We are

raising an entire generation to think that using your device while you are driving is ok. We need to change the culture around this activity. I have seen people on I-5 with an iPad strapped to their steering wheel watching a movie, which under current law is not against the law. The reality is that there are more and more accidents and to do nothing is the wrong approach. We need to act now.

It is time that we give this issue the serious attention that it deserves. There was a 30 percent increase in distracted driving crashes from 2014 to 2015. Distracted driving is a factor in one-third of all traffic deaths in Washington making it the third leading cause, just behind impairment involved and speeding involved crashes. Over 450,000 people were injured in cell phone related crashes. One of the problems with our existing law is that judges have interpreted it to only apply to texting, which is difficult to ascertain and does not cover posting on Facebook, snapchatting, using twitter, emailing, etc. Cell phone use is addictive. People can grab their phone and it is ok under the law. Entering data into your phone involves three different types of distracted activity in your brain at once and over a sustained period of time this is dangerous. Distracted driving crashes lead to congestion too. WSDOT estimates that for every minute a lane is blocked, 4-6 minutes of congestion can result. This bill will improve enforcement of this law.

An average text takes your eyes off the road for 5 to 7 seconds. That means your car can travel on the freeway the length of a football field and half without you having any idea what is going on. We need a strong statement in the law that this behavior is unacceptable. The only way to change behavior is education and a huge part of this is strong enforcement. Property Casualty Insurers Association of America feels strongly that distracted driving is a completely avoidable and unnecessary set of decisions. AAA Foundation completed a cultural index survey of Washington drivers in 2014. The survey found that 82 percent strongly or somewhat strongly support a handheld ban on cell phones for drivers. It also found that 92 percent strongly or somewhat strongly support a ban on reading and writing text or email while driving.

Parents tell me if this is risky why isn't there a law. I appeal to you to help us to make a difference. When you are texting, your eyes, fingers, and mind are off of the driving task and focused on texting, which means you are driving with the equivalent impairment to a blood alcohol level of 0.19. We don't have to wait for a drunk driver to hit someone to think that this is wrong and punish it. That is how we need to think about distracted driving.

This has affected me differently. My son Cody was working as a flagger. The driver that struck my son said "I wasn't texting, I was looking at my phone, but I wasn't texting." My son died 151 days later. My son spent a month at Harbor View and four months at another hospital. He suffered a stroke and could not speak. He suffered a massive heart attack due to the injuries he had sustained. We had to put a DNR on our 23 year old son three times. We had to do this because someone was looking at their phone instead of what they were supposed to be doing. There will be another mother here next year, so if nothing else please be willing to take a step forward and fix this law. It is broken.

I had the privilege of working with Cody Meyer. As a flagger, I see people are on their cell phones in their cars all day long. You need to do something. Please pass this bill.

My grandson, Sam, chose to answer a text and crossed over into oncoming traffic and hit a semi head on. He was killed instantly and we are only grateful that no one else was killed. He knew better. Sam's family and others similarly affected by distracted driving have continued to campaign to bring awareness to the danger of driving under the influence of electronics. This is the third legislative session our family has been here supporting a bill to fix the law. How many deaths is it going to take before Legislature will change the law to begin to help law enforcement stem the growing number of distracted driving related deaths? The laws we have today do not reflect the technology that is used by the majority of the people on our state highways.

OTHER: Amateur radio operators are not the problem out there and we should be provided an exemption. We volunteer in times of emergency. I have never heard of anyone every causing a problem that was using their radio. We are not asking for this for frivolous reasons.

**Persons Testifying:** PRO: Senator Ann Rivers, Prime Sponsor; Larry Shannon, Washington State Association for Justice; Dr. Beth Ebel, Harborview Injury Prevention and Research Center; Shelly Baldwin, Traffic Safety Commission; Mel Sorensen, Property Casualty Insurers Association of America; Daniel Coon, AAA Washington /Traffic Safety Programs Manager; Calvin Beyer, Lakeside Industries, Inc; Tina Meyer, MOM; Lavera Wade, citizen; Cody Sjogren, Diversified Northwest Inc.; Monica Alexander, WSP.

OTHER: Lee Chambers, American Radio Relay League; Monte Simpson, American Radio Relay League.

**Persons Signed In To Testify But Not Testifying:** No one.