

Legislative Analysis



PROHIBIT HAND-HELD MOBILE PHONE USE AND TEXT MESSAGING WHILE DRIVING

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House Bill 4982 (Substitute H-3)
Sponsor: Rep. Gino Polidori

House Bill 5117 (Substitute H-3)
Sponsor: Rep. Steve Bieda

House Bill 5396 (Substitute H-1)
Sponsor: Rep. Michael Sak
Committee: Transportation

First Analysis (5-19-08)

BRIEF SUMMARY: The bills would prohibit the use of hand-held telecommunication devices, and text-messaging while driving. They specify both that enforcement would be accomplished only as a secondary action (when the driver had been detained for another violation), and that no points would be assessed for violations (the accumulation of which lead to the loss of a driver's license).

FISCAL IMPACT: The three bills would likely have an undetermined positive fiscal impact on state and local government through increased fine collections. The bills would have no fiscal impact to the Department of State.

THE APPARENT PROBLEM:

In the 15 year period between 1990 and 2005, the number of U.S. citizens who used cell-phones rose from 4.3 million to 190 million, according to the *Cellular Telecommunications & Internet Association*. Today the number is higher, as cell-phone use continues to proliferate.

According to the National Highway Traffic Safety Administration, about one-third of all drivers use a cell-phone while driving, although some federal studies say the figure is much higher—finding that over 70 percent of all cell-phone users talk on the cell-phone while driving.

Motorists who use cell-phones while driving are four times more likely to get into serious crashes than those who do not. Indeed, researchers at the University of Utah have determined that motorists who are legally drunk (that is, having a blood-alcohol threshold of .08) drive better than sober cell-phone using drivers. Cell-phone users are slower to brake, take longer to regain speed after having braked, and drift out of their traffic lanes frequently.

Cell-phone use requires a driver to take his mind off the road. It poses a cognitive distraction. Unlike other distractions, cell-phone use entails behaviors that result in nearly total inattention to driving. According to expert testimony, there are three kinds of driving distractions: visual (looking away from the roadway); mechanical (dialing a cell-phone or adjusting a radio); and cognitive (conversing on a cell-phone to a party who is not aware of the driving situation and does not pause the conversation when hazards are present). Cell-phone use entails all three kinds of distractions. Talking on a cell-phone, or text-messaging while driving causes a driver to become focused on the phone call, and to lose the situational awareness so necessary for safe driving.

The Harvard Center for Risk Analysis found (in a study funded by AT&T) that cell-phone-talking drivers are responsible for about six percent of U.S. car accidents each year, resulting in 2,600 deaths and 330,000 injuries, numbers that have been confirmed by the Automobile Club of America.

In June 2007, a jury in Florida awarded \$21 million to the family of a woman killed when an employee driving a company car and talking on the phone rear-ended her in stopped freeway traffic. As a result, some corporations such as Exxon Mobil have adopted policies banning employees from using cell-phones while driving.

In order to make the roads safer, legislation has been introduced to prohibit both hand-held cell phone use and text-messaging while driving.

THE CONTENT OF THE BILLS:

The bills would amend the Vehicle Code to prohibit the use of hand-held telecommunication devices, and text-messaging, while driving. The bills specify both that enforcement would be accomplished only as a secondary action (when the driver had been detained for another violation), and that no points would be assessed for violations (the accumulation of which lead to the loss of a drivers license). The bills are tie-barred to each other so that none could go into effect unless all were enacted. A more detailed description of each bill follows.

House Bill 4982

House Bill 4982(H-3) would amend the Michigan Vehicle Code (MCL 257.602c) to prohibit a person from using a hand-held cellular telecommunication devices while driving. The prohibition would not apply to a person using a hands-free cellular communications device.

The bill specifies that a person shall not use a hand-held cellular telecommunications device while operating a motor vehicle that is moving upon a highway or street. Under the bill, "use" means to initiate a call; answer a call; or listen to or engage in verbal communication through the device.

The bill would not apply to a person who used a hand-held cellular communications device to do any of the following:

- Report a traffic accident, medical emergency, or serious road hazard.
- Report a personal safety situation.
- Report or avert a crime (or potential crime) against another.
- Carry out official duties as a police officer, law enforcement official, member of a paid or volunteer fire department, or operator of an emergency vehicle.

Under the bill, the phrase "hands-free cellular telecommunications device" means a cellular telecommunications device that has an internal feature or function or that is equipped with an attachment or addition, whether or not permanently part of the device, by which a user engages in a conversation without the use of either hand, except that the user may use either hand to activate, deactivate, or initiate a function of the device.

Finally, the bill specifies that enforcement of the prohibition would be accomplished only as a secondary action when a driver had been detained for a suspected violation of another section of the Vehicle Code. The bill also specifies that if a local unit of government adopted an ordinance substantially similar to this bill, then that ordinance would have to include the secondary enforcement provision.

A person who violated the prohibition would be responsible for a civil infraction.

House Bill 5117

House Bill 5117 (H-3) would amend the Michigan Vehicle Code (MCL 257.602b) to prohibit text-messaging while driving.

The bill specifies that a person shall not read, write, or send a text message on a wireless two-way communication device (including a wireless telephone used in cellular telephone service or personal communication service) while operating a motor vehicle that is moving on a highway or street in Michigan. Under the bill, a wireless, two-way communication device would *not* include a global positioning or navigation system that is affixed to the motor vehicle.

The bill would not apply to a person who used a wireless two-way communications device to do any of the following:

- Report a traffic accident, medical emergency, or serious road hazard.
- Report a personal safety situation.
- Report or avert a crime (or potential crime) against another.
- Carry out official duties as a police officer, law enforcement official, member of a paid or volunteer fire department, or operator of an emergency vehicle.

Finally, the bill specifies that enforcement of the prohibition would be accomplished only as a secondary action when a driver had been detained for a suspected violation of another section of the Vehicle Code. The bill also specifies that if a local unit of government adopted an ordinance substantially similar to this bill, then that ordinance would have to include the secondary enforcement provision.

Anyone who violated the prohibition would be responsible for a civil infraction.

House Bill 5396

House Bill 5396 (H-1) would amend the Michigan Vehicle Code (MCL 257.320a) to prohibit law enforcement officers and the secretary of state from assessing points for any violations of the prohibitions contained in these bills. Enforcement of the prohibitions would be accomplished only as a secondary action when a driver had been detained for a suspected violation of another section of the Vehicle Code, and points (the accumulation of which result in the loss of a driver's license) would not be assessed.

ARGUMENTS:

For:

Cell-phone use is ubiquitous. The technology allows for instant communication despite the users' mobility and distance from a land-line telephone. Many drivers--perhaps up to 70 percent--use their cell-phones while driving, despite the fact that it is unsafe. Those driving behind cell-phone users notice erratic driving behavior: cell-phone users are slow to brake and regain speed, and they often drift out of their traffic lanes. Indeed, researchers at the University of Utah have determined that motorists who are legally drunk (that is, having a blood-alcohol threshold of .08), drive better than sober cell-phone using drivers.

Cell-phone use takes a driver's mind off the road. It entails three kinds of driver distraction: visual, mechanical, and cognitive. As a result, a driver's situational awareness plummets, and accidents occur, resulting in an estimated 2,600 deaths and 330,000 injuries, annually. Recently, juries have begun awarding large settlements to the families of those killed in cell-phone-related driving accidents, and corporations have begun to ban the use of cell-phones by their employees while driving.

These bills to prohibit, while driving, the use of hand-held cell-phones, and text-messaging will save lives.

Against:

These bills to prohibit the use of cell-phones and text-messaging while driving are yet another example of unnecessary state intrusion into the private lives of citizens. Further, the bills are unnecessary because reckless driving is already against the law. Punishments can already be imposed for a wide variety of driving infractions, including the erratic driving that occurs when a driver uses a cell-phone or text-messages while operating a motor vehicle. Citizens should be left alone to self-govern their personal safe driving habits.

Against:

These are good bills, but they should be amended. First, they should allow public school bus drivers to use cell-phones to contact the parents of young children who are about to be dropped off at school bus stops, alone. According to committee testimony, school districts generally have policies that prohibit their bus drivers from leaving a young school child unattended at a bus stop. A parent or other responsible adult is required to meet the youngster at the end of the school day. Bus drivers report they use cell-phones

to contact the parents who are late to escort their children home, reminding them to meet the youngsters at the bus stop.

Second, the bills should be amended to ban the use of all cell-phones while driving--whether hand-held or hands-free or voice-activated. Research shows there is little difference in the level of distraction a driver experiences. Driving becomes erratic using either kind to cellular telecommunications device. In both instances, the driver's mind is off the road; his thinking is diverted as he participates in the telephone conversation, with little to no situational awareness.

Finally, the bills should also be amended to make any violation of the prohibitions a primary (rather than a secondary) offence. As the bills are now written, enforcement can only be accomplished as a secondary action--when a driver has been detained for another violation. Further, no points are assessed for violations. Cell-phone use while driving is unsafe. It causes unnecessary injuries and death. The prohibition on cell-phone use while driving should be total and complete. And the punishment for a violation of that prohibition should add points to a driver's record, the accumulation of which can lead to the loss of a driver's license.

POSITIONS:

The Department of State Police supports House Bill 5117. (5-8-08)

A researcher from the University of Michigan Transportation Research Institute testified in support of the bills. (5-8-08)

A T & T supports the bills. (5-15-08)

Sprint Nextel supports the bills. (5-15-08)

Verizon Wireless supports House Bill 5396, opposes House Bill 5117, and is neutral on House Bill 4982. (5-8-08)

The Michigan Association for Pupil Transportation supports the bills, if amended. (5-8-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.