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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/09  
 LAST UPDATED 03/19/09    **HB** \_\_\_\_\_

SPONSOR Lovejoy

SHORT TITLE Prohibit Driving While Texting    **SB** 341/aSJC/aHCPAC

ANALYST Lucero

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate	Indeterminate	Recurring	General Fund
	Indeterminate	Indeterminate	Recurring	Various

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Minor			Nonrecurring	General fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Public Defender Department (PDD)
- Department of Public Safety (DPS)
- Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of HCPAC Amendment

House Consumer and Public Affairs Committee amendment to SB 341, as amended, reduces the fine to \$25.00 for a violation of the texting while driving law.

#### Synopsis of SJC Amendment

Senate Judiciary Committee (SJC) amendment clarifies that the provisions of the bill apply to “a hand-held” electronic wireless communication device.

Synopsis of Original Bill

Senate Bill 341 enacts a new section of the Motor Vehicle Code, Section 66-7-358.1 NMSA. The bill prohibits the use of an electronic wireless communications device to write, send, or read a text messaging while driving except to report illegal activity, summon emergency help, prevent injury to another person or property, when the car is lawfully parked, in the operation of an authorized emergency vehicle, or to relay information between a transit or for-hire operator and that operator’s dispatcher when the device is permanently affixed to the vehicle.

The bill clarifies that a person is not in violation of the Law if the person reads, selects or enters a telephone number or name in a device for the purpose of making or receiving a telephone call.

Texting while driving is a “penalty assessment misdemeanor” and carries a \$100.00 fine.

**FISCAL IMPLICATIONS**

The Taxation and Revenue Department (TRD) has no estimate of the number of penalty assessment citations that might be issued for violation of the text message prohibition. In addition to the \$100 fine directed to the General Fund, additional add-on fines of \$44 or \$50 would be directed to various recipient funds (Local Government Corrections Fund, Traffic Safety Training Fee, Court Automation Fund, Judicial Education Fund, Judicial Facilities Fee, and Brain Injury Fund).

It is unknown whether failure to pay a fine under the Motor Vehicle Code carries any serious penalty such as jail time. Regardless, passage of this bill might have a minimal fiscal impact on the Public Defender department. It is likely that any of this minimal potential impact would be absorbed in the ordinary course of business.

Any fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. There may be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources to handle increase.

**SIGNIFICANT ISSUES**

It is unknown whether failure to pay a fine under the Motor Vehicle Code carries any serious penalty such as jail time. If this is the intention of the legislature, this should be more specifically stated.

As penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. These additional costs are not capable of quantification.

It is unclear whether it would be illegal to type directions into a digital map or global positioning system (GPS) device.

**PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

## **ADMINISTRATIVE IMPLICATIONS**

The Department of Public Safety notes that commissioned officers would have to be made aware of this statutory change; however, this can be done with the existing budget.

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases. Additionally, TRD reports there could be a minor administrative impact on the MVD for computer system changes.

## **DUPLICATION**

Duplicate: HB-301

## **OTHER SUBSTANTIVE ISSUES**

The American Automobile Association (AAA) Insurance Institute for Highway Safety Offices has done studies on cell phone use and text messaging bans, and reports that driver inattention is the leading factor in most crashes and near-crashes. In October 2008 AAA listed 17 states and Washington, DC that have some cell phone ban. Seven states prohibit any driver from text messaging: Alaska, California, Connecticut, Louisiana, Minnesota, New Jersey, and Washington. Nine other states, including Maryland, ban novice drivers such as those with a provisional license or under age 18.

Several states are considering legislation to ban texting while driving including Delaware, Florida, Hawaii, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, New Hampshire, New York, Ohio, Rhode Island, Tennessee, Virginia, and West Virginia.

An estimated 20 percent of drivers are sending or receiving text messages while behind the wheel, according to a Nationwide Insurance study. And, according to another poll, that number skyrockets to 66 percent when drivers 18 to 24 are isolated. The practice, especially popular among young people, is exacting a deadly toll.

## **ALTERNATIVES**

Nine states ban novice drivers such as those with a provisional license or under age 18.

The bill could be amended to clarify whether it is a "primary" offense - meaning a police officer could pull over a driver for a texting violation alone. Some states that prohibit texting while driving do so as a "secondary" offense, in which an officer could only take action if the motorist were also committing another violation such as speeding

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

There is a correlation between traffic crashes and driver inattention. Drivers would continue to drive while texting.

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