

ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE

March 1, 2011

1:05 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Lance Pruitt, Vice Chair
Representative Cathy Engstrom Munoz
Representative Max Gruenberg
Representative Pete Petersen

MEMBERS ABSENT

Representative Eric Feige
Representative Craig Johnson

COMMITTEE CALENDAR

HOUSE BILL NO. 22

"An Act prohibiting the use of a cellular telephone when driving a motor vehicle; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 128

"An Act relating to prohibiting the use of cellular telephones by minors when driving motor vehicles; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 35

"An Act relating to prohibiting the use of cellular telephones when driving a motor vehicle; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 68

"An Act relating to prohibiting the use of cellular telephones when driving a motor vehicle."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 22

SHORT TITLE: NO CELL PHONE USE WHEN DRIVING

SPONSOR(S): REPRESENTATIVE(S) MUNOZ, HERRON

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) TRA, JUD, FIN
03/01/11 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HB 128

SHORT TITLE: BAN CELL PHONE USE BY MINORS WHEN DRIVING

SPONSOR(S): REPRESENTATIVE(S) GARDNER

01/28/11 (H) READ THE FIRST TIME - REFERRALS
01/28/11 (H) TRA, JUD
03/01/11 (H) TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

KENDRA KLOSTER, Staff
Representative Cathy Munoz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: presented HB 22, on behalf of one the joint prime sponsors, Representative Cathy Munoz.

CINDY CASHEN, Governor's Highway Safety Representative;
Administrator, Alaska Highway Safety Office (AHSO)
Division of Program Development
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion on HB 22 and HB 128.

RANDI SPRAY, Intern
Representative Berta Gardner
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 128.

ALFRED MCKINLEY, SR., Executive Committee Member
Grand Camp Alaska Native Brotherhood/Alaska Native Sisterhood
(ANB)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 22.

JERRY LUCKHAUPT, Assistant Revisor of Statutes
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 22.

HANS BRINKE, Captain; Commander
Bureau of Highway Patrol (BHP), Alaska State Trooper (AST)
Department of Public Safety (DPS)
Wasilla, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 22.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 22.

MITCH FALK, Owner
Bullwinkle's Pizza
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 22.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment, Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of on HB 22.

ACTION NARRATIVE

[1:05:31 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:05 p.m. Representatives P. Wilson, Munoz, Pruitt, Gruenberg, and Petersen were present at the call to order.

HB 22-NO CELL PHONE USE WHEN DRIVING

1:06:14 PM

CHAIR P. WILSON announced that the first order of business would be HOUSE BILL NO. 22, "An Act prohibiting the use of a cellular telephone when driving a motor vehicle; and providing for an effective date."

1:07:13 PM

CHAIR P. WILSON explained that on today's committee calendar are four bills all related to cell phones. She indicated that Representative Doogan has declined to present his bill today. She read his letter into the record [original punctuation provided]:

I understand the House Transportation Committee you chair will be taking up the issues of cell phone use while driving on March 1, 2011. It was also brought to my attention that you offered to look at the several cell phone related bills at the same time, though Rep. Munoz' HB 22 will be the likely vehicle moving forward.

I appreciate the opportunity to present my own HB 35, but, in the interest of time and efficiency, I will respectfully decline to do so. I would urge the committee to consider some of the merits of HB 35, as it deliberates on this important safety issue. The difference between the two bills is that HB 22 makes an exception for hands-free cell phone use, while my bill does not. Studies have shown the hands-free cell use is not significantly less distracting, and that driving ability is still impaired. It is different than talking to a passenger in the car, because the requirements are different thought processes, and also because passengers are aware of changing road conditions.

Again, I thank you for the opportunity to present, though I respectfully decline, and hope the committee will pass a bill that best provides for safe roadways.

1:08:34 PM

CHAIR P. WILSON related that the committee would not hear HB 35, but would consider provisions in the bill, along with the other

cell phone bills, and the national studies which highlight research and statistics for the committee to consider.

1:09:41 PM

REPRESENTATIVE GRUENBERG explained that last legislature he introduced a cell phone bill which did not institute a primary stop. He related that he reintroduced the cell phone bill, HB 68, this legislature. He asked to place on the record that he does not plan to move forward with HB 68.

REPRESENTATIVE GRUENBERG then moved to adopt the proposed committee substitute (CS) for HB 22, labeled 27-LS0155\B, Luckhaupt, 2/24/11 as the working document. There being no objection, Version B was before the committee.

1:11:38 PM

REPRESENTATIVE MUNOZ introduced Kendra Kloster, her chief of staff, to present the committee substitute.

KENDRA KLOSTER, Staff, Representative Cathy Munoz, on behalf of one of the joint prime sponsors, stated the proposed committee substitute (CS) for HB 22 would prohibit the use of cell phones while driving a motor vehicle. This bill version allows for hands-free devices to be used to accommodate commercial drivers and tour operators. The changes in the CS include a definition for "emergency" and "hands-free mode." Additionally, as Representative Gruenberg mentioned, the CS includes a provision that identifies cell phone use as a primary offense. She referred to several studies in members packets. One study conducted by the University of Utah found motorists using cell phones are as impaired as drunk drivers. Additionally, the AHSO indicates that 60 percent of Alaskans are talking on their cell phones while driving. She reported, anecdotally, that her peers agree they often use their cell phones while driving but they recognize this activity needs to be stopped.

1:13:09 PM

MS. KLOSTER referred to another report in members' packets [Legislature Research Report, January 26, 2011, "Laws Regarding Cellular Phone Use by Drivers"] which compares actions other states have taken. She reported that 9 states and the District of Columbia have imposed statewide bans on using cell phones, 19 states and the District of Columbia prohibit use of a cell phone while operating a school bus, 28 states and the District of

Columbia prohibit novice drivers - usually defined as 18 years old or younger - from using cell phones when operating vehicles, and 30 states - including Alaska - and the District of Columbia ban drivers from texting while driving. She also reported that the National Highway Traffic Safety Administration (NHTSA) provided statistics, including that in 2009, 995 deaths and 20 percent of crashes involving injuries had reports of distracted driving from cell phone usage.

[1:14:27 PM](#)

REPRESENTATIVE GRUENBERG pointed out that at his request the effective date of July 1, 2011 was removed from the CS. He asked whether the administration would like an effective date in the bill and if so what date should be used.

CHAIR P. WILSON informed members the Department of Law and the Department of Public Safety have each submitted fiscal notes.

[1:16:11 PM](#)

CINDY CASHEN, Governor's Highway Safety Representative; Administrator, Alaska Highway Safety Office (AHSO), Division of Program Development, explained the Alaska Highway Safety Office (AHSO) administers federal funding to data-driven effective programs that encourage safe driving behavior. She stated the National Highway Traffic Safety Administration's (NHTSA) policy on cellular phone use on driving is based on the premise that it is the driver's primary responsibility to operate a motor vehicle safely. The task of driving requires full attention and focus and since cell phone use can distract a driver from this task, risking harm to his/her self and to others, that the safest course of action is to refrain from using a cell phone while driving. The NHTSA research shows that driving while using a cell phone can pose a serious cognitive distraction and can degrade driver performance. Additionally the NHTSA estimates that driver distraction from all sources contributes to 25 percent of all police reported traffic crashes. Ten years ago that statistic was only 15 percent so the number is increasing, she stated.

[1:17:44 PM](#)

MS. CASHEN reported that according to NHTSA data, drivers using hand-held cell phones increased from four percent in 2002 to six percent in 2008. The Governor's Highway Safety Association reported that drivers visibly manipulating electronic devices

for such activities such as texting doubled, increasing from .04 percent to one percent. The NHTSA study also indicated, with respect to hands-free or hand-held cell phones, that the cognitive distraction is significant enough to degrade a driver's performance. Cell phone use can cause drivers to miss seeing key visual or hearing audio cues necessary to avoid a crash. The results show that manual dialing equally as distracting as grooming or eating, but less distracting than reading or changing music compact discs (CDs). The number of crashes attributable to dialing is nearly identical to the number of crashes associated with talking or listening, she said.

[1:18:45 PM](#)

MS. CASHEN offered additional statistics. The NHTSA statistics show that in 2009, 30,797 crashes in the United States involved 45,230 drivers with 33,808 fatalities. Of the fatalities, 16 percent, or 5,474 accidents, were attributed to driver distraction.

MS. CASHEN related that accidents involving driver distraction increased from 7 percent in 2005 to 16 percent in 2009. During that time, according to the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling, fatal crashes involving reported driver distraction also increased from 10 percent to 16 percent. The two highest percentages of accidents involving distracted drivers by age group were the under-20 age group, which had the highest proportion of fatalities involving distracted drivers at 16 percent, followed by the 20-29 year-old drivers with 13 percent of its drivers involved in fatalities involving distractions. Only 12 percent of light truck drivers and motorcyclists were involved in accidents attributable to distracted driving, and bus drivers had the lowest percentage of distracted driving crashes, she stated.

MS. CASHEN prefaced her comments on Alaska's traffic accident statistics involving cell phone use. She stated that while the numbers are low, this is primarily due to the accident forms that law enforcement officers currently use. The crash report form limits the contributing factors to crashes that officers can check to two items, such as failure to yield, missing a stop sign, and running into the back of a car. She informed members that currently a subcommittee is working to address the crash form issues by adding additional items such as cell phone, hands-free, and texting as contributing factors for crashes.

[1:20:59 PM](#)

MS. CASHEN reviewed Alaska statistics obtained from law enforcement officer report forms. During 2002 - 2008 a total of 89,770 motor vehicle accidents occurred during the six year period. Of those crashes, law enforcement officers reported 399 involved cell phone usage, 224 crashes involving cell phone use resulted in property damage only, 155 crashes resulted in minor injuries, 19 crashes resulted in major injuries, and one crash was fatal. She stressed that the figures were based on law enforcement officer's crash report information, which only allow two contributing factors to be checked. She pointed out that 142 of the crashes involved drivers between the ages of 16-20, or 36 percent, which represents a significant number of young people. She indicated that although the state has limited cell phone use data available, the national data was compelling enough for the AHSO to take action. The AHSO created radio and television advertising using federal funds to discourage distracted driving including the use of cell phones.

[1:22:27 PM](#)

REPRESENTATIVE PRUITT asked whether any information was available on accidents caused by distracted drivers using the radio.

MS. CASHEN offered to check. She said she did recall any general crash information involving radio use.

[1:23:21 PM](#)

REPRESENTATIVE MUNOZ recalled that officers are limited in the criteria identifying causes of accidents when reporting crashes. She asked how broadening the criteria to add cell phone usage would change information and if she thought it would give a more accurate view on crashes.

MS. CASHEN offered her belief that the department could collect far more extensive data about cell phone use in Alaska. She acknowledged the difficulty in obtaining accurate information based on the current crash form. The department's goal is to increase data collection while at the same time making it easier for law enforcement officers to fill out the crash forms.

REPRESENTATIVE MUNOZ related her understanding that currently the department knows that cell phone use is implicated in accidents and can lead to fatalities. She asked whether she

thought more thorough information would indicate significantly more accidents are due to cell phone use than previously reported.

MS. CASHEN answered yes.

CHAIR P. WILSON commended the department for working to change the crash form.

REPRESENTATIVE PETERSEN agreed. He pointed out some vehicles have a navigation device that uses a computer generated voice for directions. He asked whether studies have been performed to assess the level of distraction when using these enhancements with respect to crashes. He related his own experience as a passenger and that he found the navigation device rather jarring.

MS. CASHEN answered that the navigation technology is relatively new technology so she did not believe those statistics were included in the NHTSA study. She said "a distraction is a distraction but I don't believe it was one that was looked at in the study." She offered to research and report back to the committee.

[1:26:42 PM](#)

CHAIR P. WILSON recalled that verbal processes use a cognitive process that can affect drivers differently than listening to a radio.

MS. CASHEN reiterated her offer to research this issue. She recalled that putting on makeup, looking in the rearview mirror and listening to music or a radio comprise different levels of distraction. She also recalled a table in the NHTSA study compares the levels of distraction. She offered to review the table for the committee.

[1:27:49 PM](#)

REPRESENTATIVE GRUENBERG referred to page 1, line 5, of HB 22, and related his understanding that language prohibits cell phone use while driving when the vehicle is in motion but does not apply to a driver using a cell phone when he/she has just turned on the radio.

MS. CASHEN said she was not certain.

REPRESENTATIVE GRUENBERG further related his understanding that the use of the term "driving" is a technical term which does not mean just turning on the car to run a heater. There is a distinction between "driving" and "operating a vehicle" which requires the process of moving. He said he would like this distinction to be clear on the record.

REPRESENTATIVE PETERSEN asked for further clarification on whether it would be legal for a person to use a cell phone while the vehicle is running so long as the vehicle is not in motion.

REPRESENTATIVE GRUENBERG offered his belief a body of law exists that pertains to driving under the influence (DUI) that addresses this issue. He recalled the DUI provisions do not apply and it would not be a violation of the law when a person is parked alongside the roadway using the heater. He acknowledged that a person could not use a cell phone while stopped at a stop light, but offered his belief if the car was parked off the roadway in park that it would be allowable.

REPRESENTATIVE MUNOZ answered yes.

[1:30:49 PM](#)

REPRESENTATIVE PRUITT referred to Representative Gardner's bill, HB 128 and asked for her staff's input on what the bill provides in terms of cell phone usage. He related that the other bills on the calendar have been addressed, except for HB 128.

HB 128-BAN CELL PHONE USE BY MINORS WHEN DRIVING

[1:31:22 PM](#)

CHAIR P. WILSON announced that the next order of business would be HOUSE BILL NO. 128, "An Act relating to prohibiting the use of cellular telephones by minors when driving motor vehicles; and providing for an effective date."

[1:31:39 PM](#)

RANDI SPRAY, Intern, Representative Berta Gardner, Alaska State Legislature, stated that HB 128 prohibits drivers under the age of 18 from using cell phones while driving.

[1:31:46 PM](#)

REPRESENTATIVE PRUITT recalled that the committee briefly discussed other cell phone bills, but not HB 128. He asked why the sponsor limited HB 128 to minors only and for the sponsor's view on broader coverage.

CHAIR P. WILSON also agreed it was important to consider HB 128 in case the committee wants to consider incorporating any provision into HB 22. She asked for clarification on the reason for the bill and why the cell phone ban is limited to teenagers.

[1:32:39 PM](#)

MS. SPRAY explained that HB 128 would prohibit anyone under the age of 18 to from using a cell phone while driving. It would also make cell phone use a secondary offense so the driver would have to be pulled over for another infraction in order to be cited. The sponsor introduced this bill specifically limited to minors is because they are most at risk from using their cell phone while driving. The statistics show motor vehicle crashes are the number one cause of death for teenagers. In Alaska, statistics show that motor vehicle crashes are the number two causes of injuries requiring hospitalization. Drivers between the ages of 16-17 have the highest fatality rates in crashes, and approximately 36 percent of crashes in Alaska involve drivers between the ages of 16-20, yet this age group represents only 7.4 percent of Alaska's drivers. She concluded that Representative Gardner introduced HB 128 since it targets those most at risk. The bill also serves to teach teenagers proper driving habits by saying, "This is the law, not just good advice," she said.

[1:33:56 PM](#)

REPRESENTATIVE PETERSEN asked whether she could give the committee her insight and predict how teenagers would feel about HB 128.

MS. SPRAY did not think minors would like HB 128. She recalled being a passenger in a vehicle while an inexperienced teenager was using his/her cell phone. She said she was scared when the driver used his/her cell phone.

[HB 128 was held over.]

HB 22-NO CELL PHONE USE WHEN DRIVING

CHAIR P. WILSON asked to now take public testimony on HB 22.

1:35:22 PM

ALFRED MCKINLEY, SR., Executive Committee Member, Grand Camp Alaska Native Brotherhood/Alaska Native Sisterhood (ANB), stated that he supports HB 22 because his brother-in-law, Mr. John Hope, was killed and his sister was badly injured. He did not want others to be killed due to cell phone use. He suggested the bill should be expanded to include individuals riding a bicycle while using a cell phone. He suggested the bill should also extend to pedestrians since pedestrians sometimes step into traffic without looking and he has almost hit people who step into the street while using cell phones. He remarked that pedestrians simply expect to have the right of way so they step right in front of him. He characterized HB 22 as a good bill.

MR. MCKINLEY explained when he receives a call on his cell phone while driving that he answers the call but tells the caller he will call back. He acknowledged the dangers of using a cell phone while driving. He has personally experienced this while in Seattle driving on Interstate 5, which he characterized as very busy, and his cell phone rang. He reiterated the problems with cell phones and illustrated the risk by stating that his brother in law, John Hope, is no longer here.

CHAIR P. WILSON pointed out if HB 22 were to pass that Mr. McKinley would not be able to answer his phone while driving.

MR. MCKINLEY answered that he did not have a problem with that restriction.

1:39:48 PM

REPRESENTATIVE PETERSEN asked whether the Mr. Hope's accident was caused by someone using a cell phone.

MR. MCKINLEY acknowledged that the person responsible for the accident was using his cell phone and although it was not proven, the person was also drinking alcohol.

REPRESENTATIVE GRUENBERG remarked that Mr. McKinley's testimony was important particularly since this is the first time he recalled testimony on cell phone use while operating a bicycle. He said that as far as pedestrians, "I'm not going to go there. People can walk and I'm not going to deal with that." However, cell phone use by bicyclists was another matter since he/she must balance at the same time and bicycles are often used during

the winter on snow and ice. He envisioned using a cell phone while balancing on a bicycle as extremely risky. He asked whether he thought the bill should also address bicyclists using cell phones.

MR. MCKINLEY agreed.

REPRESENTATIVE GRUENBERG asked the chair's permission to explore this avenue.

[1:42:37 PM](#)

JERRY LUCKHAUPT, Assistant Revisor, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), introduced himself.

[1:43:01 PM](#)

REPRESENTATIVE GRUENBERG asked for clarification on the term "driving" as it pertains to cell phone use. He asked whether a person would be prohibited from listening to a radio if the vehicle was parked off the roadway.

MR. LUCKHAUPT agreed, noting the reason the bill language uses "driving" instead of "operating" is to address that issue. The broader term of "operating" is used to designate a person in control of the vehicle so for "drunk driving" purposes if a person has the keys in his/her pocket but is asleep in the car, the person is still considered to be in control of the vehicle. He advised the person could be convicted of operating a vehicle. However, the term "driving" is considered actively driving, he said.

[1:43:47 PM](#)

CHAIR P. WILSON recalled pulling over to the side of the roadway to answer her cell phone. She asked whether answering the phone while idling would be allowable under the bill.

MR. LUCKHAUPT responded that the term "driving" was used for someone pulled over and not actively driving. He thought it would be better if the car was also in park to avoid any driver distraction, but he did not think she would be subject to a penalty under this section.

[1:44:38 PM](#)

REPRESENTATIVE GRUENBERG referred to page 1, line 5, of HB 22 to the use of the term "motor vehicle" and asked whether that would include motorcycles and motor scooters.

MR. LUCKHAUPT advised that the term "motor vehicle" is defined in AS 28.90.990 (16), which reads: "motor vehicle" means a vehicle which is self-propelled except a vehicle moved by human or animal power;..." This definition would not include a bicycle or carriage pulled by horses.

[1:45:25 PM](#)

REPRESENTATIVE GRUENBERG said in the event the committee decided to expand the bill to include bicycles that it may wish to consider as a conceptual amendment the language: "when driving a motor vehicle or bicycle."

MR. LUCKHAUPT agreed. He also suggested considering adding "any other human power." He pointed out a regulation that addresses unicycles restricts the use of unicycles in certain areas of town. He suggested that bicycles could also be addressed in a similar manner or the committee could expand the language to include "any human powered device."

[1:46:26 PM](#)

REPRESENTATIVE PETERSEN asked whether skateboard use could be added to the bill.

REPRESENTATIVE GRUENBERG offered his belief that would fall under human powered devices.

MR. LUCKHAUPT advised that technically a skateboard would be a vehicle although he remarked he does not normally think of it as one. However, someone cannot ride a skateboard on a highway or vehicular way since that activity would be prohibited. He added it may be possible other provisions would allow use of a skateboard in those areas. He offered to consider skateboard use further since he has not previously considered a skateboard as being a vehicle.

[1:47:37 PM](#)

REPRESENTATIVE PRUITT asked whether motor vehicle would also include four wheelers, snow machines, and boats.

MR. LUCKHAUPT answered that four wheelers and snow machines are considered a motor vehicle, while boats are considered separately. A person cannot operate a boat on a highway or vehicular area so boats would not be included in the bill. In response to Representative Pruitt, he stated that a riding lawn mower is considered a motor vehicle and people have been convicted of DUIs while operating riding lawnmowers.

CHAIR P. WILSON offered her belief that people would not likely hear a cell phone ring while operating a four-wheeler or snow machine.

REPRESENTATIVE PRUITT said he was uncertain of this since he recalled observing a pilot answer his/her cell phone while operating an airplane and airplanes are noisy, too.

REPRESENTATIVE GRUENBERG reiterated that he had not previously considered expanding the bill to add bicycles.

[1:50:56 PM](#)

CHAIR P. WILSON, after first determining no one else wished to testify, asked to keep public testimony open on HB 22 since some public members may still wish to make comments on the proposed CS.

REPRESENTATIVE GRUENBERG offered his willingness to work on a conceptual amendment to include bicycles and to offer it in the next committee of referral.

CHAIR P. WILSON expressed her concern that the public may need more time to participate so she preferred to hold HB 22 over. She related she has experienced cell phone use while driving and she stressed the importance of the bill. She predicted that some people may not like the bill so she would like the public to have additional time to testify. She also wanted the committee to consider how to accommodate truck drivers or others who need to communicate with dispatchers.

REPRESENTATIVE GRUENBERG stated that he worked extensively during this past interim with the Alaska Truckers Association. He reported that the federal government is working to promulgate regulations to ban all cell phone use in commercial trucking operations. He suggested that the committee not address the truckers in this bill since the federal regulation will supersede the Alaska law. He offered his belief that the Alaska Truckers Association supports this approach.

REPRESENTATIVE PETERSEN pointed out that many truckers do not use a cell phone but use citizen band (CB) radio. This bill would not affect truckers using CB radios.

CHAIR P. WILSON acknowledged that the representatives present from the Department of transportation and the Department of Law are nodding their assent.

[1:57:11 PM](#)

REPRESENTATIVE PETERSEN suggested that the committee should also consider whether this bill should address cell phone use as a primary or secondary offense. He asked whether a motorist should be stopped solely for cell phone use. He also recalled a zero fiscal note for HB 22, but after hearing the statistics reported today that he was uncertain it should be a zero fiscal note. He suggested additional officers might be necessary to enforce HB 22, if the bill passes. He asked for clarification on these issues.

CHAIR P. WILSON answered that she strongly supports keeping cell phone use while driving as a primary offense in HB 22.

REPRESENTATIVE GRUENBERG agreed that cell phone use should be a primary offense but he said he would like to expand the bill to include cell phone use while operating a bicycle. He said he also would like to broaden the bill to include vehicles operated by human power. He offered to work with the bill sponsor on draft language to include those provisions.

REPRESENTATIVE MUNOZ asked for clarification on expanding the bill to include bicycles.

CHAIR P. WILSON explained the committee heard testimony earlier today about a motor vehicle crash caused by someone using a cell phone while riding a bicycle.

REPRESENTATIVE MUNOZ offered to give the idea some thought. She related her primary interest and focus for HB 22 is to address drivers and motor vehicles.

REPRESENTATIVE GRUENBERG offered to speak to the sponsor and if she was agreeable that he would draft language for consideration.

[2:03:04 PM](#)

REPRESENTATIVE PETERSEN suggested considering how to disseminate information to the broad range of people that may be affected by HB 22, especially since fines are included in the bill.

REPRESENTATIVE GRUENBERG asked for clarification on the public education aspect and whether the bill should include a temporary provision to provide an education component.

MS. CASHEN advised member that distracted driving is one of AHSO's top priorities. She offered that the department has implemented distracted driving and radio ads in its statewide media. Thus, no additional costs would be incurred by the department. The AHSO would bump up its advertising to a level two or three, she said. Currently, the department ads highlight distracted driving. "Don't put on your lipstick. Don't open your cell phone. Don't look in the back of your car while you're driving," she said. She anticipated the AHSO would focus on cell phone use, to address hand held or hands free cell phone, based on provisions in HB 22 if the passes. The media piece would also identify the effective date of the bill. She envisioned the department would use saturation advertising about a month before the law's effective date, then two weeks before and two weeks after the effective date. Additionally, the AHSO would put the ad in its advertising rotation so an ad would run periodically. Additionally, the department would periodically change the law so people would not view the same ad year after year.

[2:06:33 PM](#)

REPRESENTATIVE GRUENBERG related his understanding that the AHSO would not need any additional language to carry out the public education.

MS. CASHEN answered no.

REPRESENTATIVE GRUENBERG asked whether an effective date would be necessary.

MS. CASHEN answered that an effective date is not necessary since the AHSO already has distracted driving as its top priority.

REPRESENTATIVE GRUENBERG asked whether the Department of Public Safety would need to be contacted with respect to an effective date.

MS. CASHEN answered that while the AHSO works closely with the DPS, the department does not hold any discussions on effective dates on bills. She explained that the department would only consider the effective date for planning purpose just as it did for the child booster seat law.

[2:08:10 PM](#)

REPRESENTATIVE GRUENBERG asked whether DPS should be contacted.

REPRESENTATIVE MUNOZ offered to check with the DPS on the effective date.

[2:08:29 PM](#)

REPRESENTATIVE PRUITT asked for clarification on whether cell phone use is currently classified as distracting driving.

MS. CASHEN answered yes.

REPRESENTATIVE PRUITT asked for clarification on the criteria necessary for a law enforcement officer to pull over a driver using a cell phone.

[2:09:12 PM](#)

HANS BRINKE, Captain; Commander, Bureau of Highway Patrol (BHP) Alaska State Trooper (AST), Department of Public Safety (DPS), related his understanding the question is what the officer would need to initiate a traffic stop for a person using a cell phone. He answered that if a person is using a cell phone and it is not for an excepted practice, the officer could initiate a traffic stop.

REPRESENTATIVE PRUITT asked for clarification on excepted practice.

CAPTAIN BRINKE related that excepted use is defined in another statute and includes using a cell phone as a global positioning device, and map systems, which are often in smart phones. He described a traffic stop he made in which he had observed a driver manipulating a cell phone. When the driver was stopped for a violation, he/she indicated use of a global positioning device, which was allowable under the law, he said.

[2:11:22 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), introduced herself.

REPRESENTATIVE GRUENBERG asked why this bill is necessary if the state has a distracted driving law.

REPRESENTATIVE PRUITT said he would also like clarification on how this bill differs from the current law would be appreciated.

[2:12:13 PM](#)

REPRESENTATIVE GRUENBERG recalled prior discussions on an anti-text bill. He also recalled that besides identifying the person using a cell phone that it was necessary to show that the activity distracted the driver. This bill would make distracted driving per se, which would provide an easier burden of proof.

MS. CARPENETI agreed. She recalled earlier testimony by Ms. Cashen that described the AHSO's advertising approach for distracted driving and not necessarily to a particular statute. She thinks cell phone use is considered distracted driving as a practical matter.

CHAIR P. WILSON pointed out that drivers engage in distracted driving, but unless an accident happens it is not necessarily against the law, but is similar to other activity such as turning on the radio. She recalled a bad accident in her district caused by a distracted driver.

MS. CARPENETI stated that distracting behaviors such as putting on lipstick, reading a book, or looking in the backseat are not specifically prohibited but the state has statutes for negligent or reckless driving that could be used to cite the driver.

CHAIR P. WILSON indicated that Ms. Cashen is nodding in agreement.

[2:15:13 PM](#)

MR. LUCKHAUPT pointed out that the separate statutes Captain Brinke referred to relate to operating a vehicle with a screen device, which include texting or watching a movie. Some exceptions to that statute allow some use for global positioning devices or a long distance trucker is allowed to use a data terminal to input weight points or communicate his/her

dispatcher. Another exception applies to viewing caller identification information. He advised that none of these exceptions would affect HB 22. This bill would not allow any cell phone use except for a hands-free device. He said he wanted to clarify this since the defenses in the screen device provisions in current statute do not apply to HB 22.

[2:17:26 PM](#)

REPRESENTATIVE PETERSEN asked for a specific statute that defines distracted driving.

MR. LUCKHAUPT answered that the statutes do not identify a crime of distracted driving but as Ms. Carpeneti mentioned, the statutes identify reckless or negligent driving. Thus, if a driver does something that would rise to that level he/she could be cited, but reaching for something such as a radio does not normally rise to that level. He commented that if someone was riding with dog on lap and the dog was distracting the driver, it is possible that the driver's behavior could rise to level of an offense, but other facts would likely need to be considered.

[2:19:09 PM](#)

MITCH FALK, Owner, Bullwinkle's Pizza, stated that he has often truck drivers use a cell phone while attempting to shift. He offered his belief that the drivers are forced to steer with their knees. He pointed out that kids in Juneau have hard enough time learning to drive, especially with the lack of driver's education. He offered his support for HB 22.

REPRESENTATIVE PETERSEN asked whether he would get hands free cell phones for his pizza drivers if this bill passes.

MR. FALK agreed he probably would do so. He said that communication is necessary in order for his drivers to do their jobs. He added that cell phone use is on the rise and needs to be checked.

[2:23:51 PM](#)

REPRESENTATIVE MUNOZ recapped outstanding issues on HB 22. She offered to contact DPS on the effective date. She remarked that the AHSO can incorporate the advertising into its current plan. She offered to work with Representative Petersen on the issue of primary versus secondary offenses. She also offered to work

with Representative Gruenberg on whether to expand the bill to include bicycles.

CHAIR P. WILSON stressed that HB 22 should address cell phone use as a primary offense. She acknowledged that minors do not have ready access to drivers' training. She stressed that if it is against the law to use a cell phone that it sends a message.

REPRESENTATIVE MUNOZ offered her belief the bill should apply to all drivers. She said she feels strongly about that aspect.

REPRESENTATIVE PRUITT asked to reconsider the zero fiscal note and whether some cost may be needed in order to implement the bill.

REPRESENTATIVE GRUENBERG agreed.

MS. CARPENETI responded that the zero fiscal impact is not an issue. It is not whether the activity is a primary or secondary offense, but rather that the penalty constitutes a violation. The agency does not appear in court for most violations so this would not have an effect on their offices or on the assistant district attorneys.

[2:29:06 PM](#)

REPRESENTATIVE GRUENBERG asked Captain Brinke for his comments on the fiscal note.

CAPTAIN BRINKE deferred to Lt. Rodney Dial since he prepared the DPS fiscal note.

REPRESENTATIVE GRUENBERG asked for clarification on the DPS fiscal note.

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said that passage of HB 22 would add an additional offense officers could issue citations for. However, it would not change the time officers spent on traffic enforcement. It may mean a tradeoff since an officer conducting a stop for cell phone use may not apprehend other violators such as those speeding motorists. He reiterated that traffic enforcement is based on allowable time.

[2:32:01 PM](#)

REPRESENTATIVE PETERSEN asked how many points would be assessed against a driver's license if the bill passed and the person was cited for driving while using a cell phone. He asked whether designating points assessed against a driver's license would need to be added to the bill.

LIEUTENANT DIAL said he thought the court would probably set the driver license points.

REPRESENTATIVE PETERSEN related the number of points is important to consider since it could affect a driver's insurance rates.

CHAIR P. WILSON offered her belief that people would likely want to be careful not to use their cell phones if they want to keep their driver's license.

MS. CARPENETI said she was uncertain how the points would be set if this bill were to pass.

[2:33:31 PM](#)

MR. LUCKHAUPT explained that AS 28.15.221 sets up the point system and provides for the commissioner of the Department of Administration or DPS to assign the points based on the recognition of the severity of the offense. This process is used for every new offense. He offered his belief that cell phone use while driving would be akin to other basic offenses, which is usually set at two points. In response to Chair Wilson, he said the legislature does not generally advise the department since it is usually a process set by regulation.

[2:34:55 PM](#)

REPRESENTATIVE MUNOZ referred to the hands free provision in HB 22 as a carryover from testimony last legislature on Representative Doogan's bill. She recalled testimony by commercial operators in favor of hands-free provision, which is the reason she preserved it when introducing HB 22.

[2:35:36 PM](#)

REPRESENTATIVE MUNOZ remarked as a joint prime sponsor she has received considerable written comments and telephone comments on the bill. She stated that she has also received support from the Alaska Police Officer's Association, the Alaska Association of Chiefs of Police, the Women Police of Alaska, and several

individuals and community organizations have expressed support for HB 22.

[HB 22 was held over.]

[2:37:08 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:37 p.m.