SB 123

<TARGET><BILL>SB 123</BILL><SUBJECT>SB 123</SUBJECT><COMM>SJUD29</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 2/17/16

FURTHER: Rules

DATE TURNED IN TO OFFICE: 2/25/16

Judiciary Committee considered SENATE BILL NO. 123

SB 123-USE OF ELECTRONIC DEVICES WHILE DRIVING

"An Act relating to the penalty for the use of electronic devices while driving."

and recommends:

[✓] be **replaced** with **CS** SB 123 - _____ (JUD) [ ] *Same Title* [✓] *New Title*

[ ] adopt **previous CS** _____ (_____) [ ] *Same Title* [ ] *New Title*

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DPS			✓	1
ADM			✓	2

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
John Coghill	COGHILL	✓			
[illegible]	COSTELLO	✓			
	[illegible]				
CHAIR: [illegible]	MCGUIRE	✓			

Alaska State Legislature

Interim:
716 West 4th Avenue
Anchorage, Alaska 99501
(907) 269-0199 Phone
(907) 269-0197 Fax

Session:
State Capitol Building, Room 111
Juneau, Alaska 99801-1182
(907) 465-4945 Phone
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Senate President Kevin Meyer

Senate District M

TO: Senator Lesil McGuire, Chair
Senate Judiciary Committee

FROM: Senator Kevin Meyer
Senate President

DATE: February 17, 2016

RE: Request to Schedule SB 123: Use of Electronic Devices While Driving

With this memorandum, I respectfully request the scheduling of SB 123 before the Senate Judiciary Committee. This legislation reduces the penalty for operating an electronic screen device (texting) while driving from a class A misdemeanor to a violation.

Attached to this memorandum please find:

- Sponsor Statement
- SB 123, Version 29-LS1198\A
- Fiscal Note – Department of Administration, Office of Public Advocacy
- Fiscal Note – Department of Public Safety, Alaska State Troopers
- State of Alaska Charges Under AS 28.35.161 by Jurisdiction
- State of Alaska Texting While Driving Penalties
- National Conference of State Legislatures Cellular Phone Use and Texting While Driving Laws
- Alaska Dispatch News Article 11/10/2015
- Hands Free Info Web Article *Alaska: Cell Phone Laws, Legislation*
- Anchorage Ordinance: AO No. 2015-126

If you have any questions, please contact the staff member assigned to this bill, Edra Morledge at 465-6874.

Alaska State Legislature

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Senate President Kevin Meyer

Senate District M

SB 123: Use of Electronic Devices While Driving
Version E

SB 123 changes the penalty for driving while texting from a class A misdemeanor to a violation of up to $500, unless the action causes physical injury or death to another person. The more severe felony penalties for those offenses will remain unchanged. The reduction in penalty is intended to make prosecution of distracted drivers more expedient, in that law enforcement officers will be able to issue tickets immediately, rather than prosecute the individual through the court system. In addition, the legislation directs the Courts to add the violation to the bail schedule, and establishes an effective date. No other aspect of current law as summarized below is changed by this legislation.

Except for emergency vehicles, operating an electronic screen device while driving is illegal when:

1. The vehicle is moving
2. The vehicle has a television, video monitor, or portable computer in full view of the driver and the monitor or visual display is operating while the person is driving

Exceptions to the law are:

1. Using cell phones or tablets for verbal communication or displaying caller ID
2. Using equipment that is displaying information such as audio/stereo, GPS and navigation devices, vehicle operation information, video equipment showing reversing/maneuvering (driving) operation
3. Utilizing vehicle dispatching and response information for emergency roadside assistance and passenger or freight package delivery
4. Using information being displayed to perform highway construction, maintenance, or repair or data acquisition by DOT/PF or a municipality
5. Emergency vehicles (police, fire or emergency medical service) are exempt from these prohibitions

I respectfully request your support on SB 123.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: SB 123
Fiscal Note Number:
() Publish Date:

Identifier: SB123-DOA-OPA-02-09-16
Title: USE OF ELECTRONIC DEVICES WHILE DRIVING
Sponsor: MEYER
Requester: Senate State Affairs

Department: Department of Administration
Appropriation: Legal and Advocacy Services
Allocation: Office of Public Advocacy
OMB Component Number: 43

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2017**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Fund Source (Operating Only)

None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Richard Allen, Director — Phone: (907)269-3504
Division: Office of Public Advocacy — Date: 02/09/2016 08:30 AM
Approved By: Sheldon Fisher, Commissioner — Date: 02/09/16
Agency: Department of Administration

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. SB 123

Analysis

This bill reduces the level of offense for using an electronic device while driving from a misdemeanor to a violation.

The Office of Public Advocacy does not anticipate a fiscal impact from this legislation. and therefore, submits a zero fiscal note.

(Revised 9/9/15 OMB/LFD)

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: SB 123
Fiscal Note Number:
() Publish Date:

Identifier: SB123-DPS-AST-02-08-16
Title: USE OF ELECTRONIC DEVICES WHILE DRIVING
Sponsor: MEYER
Requester: State Affairs

Department: Department of Public Safety
Appropriation: Alaska State Troopers
Allocation: Alaska State Trooper Detachments
OMB Component Number: 2325

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2017**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Fund Source (Operating Only)

None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Lt. David Hanson
Phone: (907)269-5587
Division: Alaska State Troopers
Date: 02/08/2016 03:30 PM
Approved By: Gary Folger, Commissioner
Date: 02/08/16
Agency: Public Safety

Analysis

This bill amends AS 28.35.161(f) to reduce the penalty for using an electronic device while driving from a misdemeanor to a violation if no physical injury, serious physical injury, or death of another person was caused.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: SB 123
Fiscal Note Number:
() Publish Date:

Identifier: SB123-LAW-CRIM-02-08-16
Title: USE OF ELECTRONIC DEVICES WHILE DRIVING
Sponsor: MEYER
Requester: Senate State Affairs

Department: Department of Law
Appropriation: Criminal Division
Allocation: Criminal Justice Litigation
OMB Component Number: 2202

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2017**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Fund Source (Operating Only)

None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By:	Valerie Rose, Budget Analyst	Phone:	(907)465-3674
Division:	Administrative Services Division	Date:	02/08/2016 08:53 AM
Approved By:	Craig W. Richards, Attorney General	Date:	02/08/16
Agency:	Department of Law		

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. SB 123

Analysis

This legislation reduces the crime of texting while driving from a class A misdemeanor to a violation. The Department of Law does not anticipate a fiscal impact.

Texting While Driving Charges (AS 28.35.161)

Provided by the Department of Law 1/25/2016

Texting While Driving AS 28.35.161			
Office	**2013**	**2014**	**2015**
Anchorage	13	11	7
Kenai	6	9	4
Palmer	8	26	19
Juneau	3	0	2
Sitka	0	1	0
Ketchikan	1	0	0
Total	31	47	32

Alaska Texting While Driving Penalties		
Text and drive only	Class A Misdemeanor	up to $10,000 and 1 year in prison
Injure someone	Class C Felony	up to $50,000 and 5 years in prison
Seriously injure someone	Class B Felony	up to $100,000 and 10 years in prison
Kill someone	Class A Felony	up to $250,000 and 20 years in prison

Be Road Wise AK

The Alaska State Troopers put all our other highway safety messages under this heading. There are many more factors that can create hazardous situations on Alaska roads. You, the driver, are on the front line. You make the biggest difference when it comes to safety on our roadways.

View these public service announcements

5700 E Tudor Road, Anchorage, AK 99507 Phone: (907) 269-5511
Department of Public Safety Site Map Privacy Policy Contact Us
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NATIONAL CONFERENCE *of* STATE LEGISLATURES

Cellular Phone Use and Texting While Driving Laws

7/1/2015

The prevalence of cellular phones, new research, and publicized crashes has started many debates related to the role cell phones play in driver distraction. This chart details sta cellular phone use and texting while driving laws.

- **Hand-held Cell Phone Use Ban:** 14 states, D.C., Puerto Rico, Guam and the U.S. Virgin Islands prohibit all drivers from using hand-held cell phones while driving.
- **All Cell Phone ban:** No state bans all cell phone use for all drivers, but 37 states and D.C. ban all cell phone use by novice or teen drivers, and 20 states and D.C. proh cell phone use for school bus drivers.
- **Text Messaging ban:** 46 states, D.C., Puerto Rico, Guam and the U.S. Virgin Islands ban text messaging for all drivers.
  - 3 states prohibit text messaging by novice or teen drivers.
  - 3 states restrict school bus drivers from texting.

Source: Governor's Highway Safety Administration.

The box allows you to conduct a full text search or use the dropdown menu option to select a state.

Reset | Select a State

States	Hand-held ban	All cell phone ban	Texting ban	Enforcement	Crash Data Collection
Alabama	No	Drivers age 16 and 17 who have held an intermediate license for less than 6 months.	All drivers	Primary: texting by all drivers Secondary: cell phone use by young drivers	
Alaska	No	No	All drivers	Primary: texting by all drivers	Yes
Arizona	No	School bus drivers	No	Primary: cell phone use by school bus drivers	
Arkansas	Drivers ages 18 to 20 years of age	School bus drivers, drivers younger than 18	All drivers	Primary: for texting by all drivers and cell phone use by school bus drivers. Secondary: for cell phone use by young drivers	Yes
California	All drivers	School and transit bus drivers and drivers younger than 18	All drivers	Primary: hand held and texting by all drivers. Secondary: all cell phone use by young drivers.	Yes
Colorado	No	Drivers younger than 18	All drivers	Primary: for texting by all drivers and for drivers younger than 18.	Yes
Connecticut	All drivers	Learner's permit holders, drivers younger than 18, and school bus drivers	All drivers	Primary: for all offenses.	
Delaware	All drivers	Learner's permit and intermediate license holders and school bus drivers	All drivers	Primary: for all offenses.	Yes
District of Columbia	All drivers	School bus drivers and learner's permit holders	All drivers	Primary: for all offenses.	Yes
Florida	No	No	All drivers (effective 10/01/13)	Secondary: for texting by all drivers.	Yes
Georgia	Drivers younger than 18	School bus drivers. Drivers younger than 18.	All drivers	Primary: for all offenses.	Yes
Hawaii	All Drivers (effective 7-1-13)	Drivers younger than 18	All Drivers	Primary: for all offenses.	
Idaho	No	No	All Drivers	Primary: for texting by all drivers.	Yes***
Illinois	All Drivers	Learner's permit holders younger than 19, drivers	All drivers	Primary: for all offenses.	Yes

States	Hand-held ban	All cell phone ban	Texting ban	Enforcement	Crash Data Collection
		younger than 19, and school bus drivers			
Indiana	No	Drivers under the age of 18.	All drivers	Primary: for all offenses.	Yes
Iowa	No	Learner's permit and intermediate license holders	All drivers	Primary: for drivers cell phone use by young drivers. Secondary: for texting by all drivers.	Yes
Kansas	No	Learner's permit and intermediate license holders	All drivers	Primary: for all offenses.	Yes
Kentucky	No	Drivers younger than 18, School Bus Drivers.	All drivers	Primary: for all offenses.	Yes
Louisiana	No	School bus drivers, learner's permit and intermediate license holders, drivers under age 18	All drivers	Primary: for all offenses.	Yes
Maine**	No	Learner's permit and intermediate license holders	All drivers	Primary: for all offenses.	Yes
Maryland	All drivers, School Bus Drivers.	Learner's permit and intermediate license holders under 18. School bus drivers.	All drivers	Primary: for all offenses. (effective 10/01/13)	Yes
Massachusetts	Local option	School bus drivers, passenger bus drivers, drivers younger than 18.	All drivers	Primary: for all offenses.	Yes
Michigan	Local option	Level 1 or 2 license holders.	All drivers	Primary: for texting by all drivers and level 1 or 2 license holders.	Yes
Minnesota	No	School bus drivers, learner's permit holders, and provisional license holders during the first 12 months after licensing	All drivers	Primary: for all offenses.	Yes
Mississippi	No	School bus drivers.	All drivers (effective July 2015)	Primary	Yes
Missouri	No	No	Drivers 21 years or younger.	Primary: Drivers 21 years or younger	
Montana	No	No	No	Not applicable	Yes
Nebraska	No	Learner's permit and intermediate license holders younger than 18	All drivers	Secondary: for all offenses.	Yes
Nevada	All drivers	No	All drivers	Primary: for all offenses.	Yes
New Hampshire	Yes	No	All drivers	Primary	
New Jersey	All drivers	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary: for all offenses.	Yes
New Mexico	Local option	Learners permit and intermediate license holders.	All Drivers	Primary: texting by all drivers.	Yes
New York	All drivers	No	All drivers	Primary: for all offenses.	Yes
North Carolina	No	Drivers younger than 18 and school bus drivers	All drivers	Primary: for all offenses.	
North Dakota	Drivers younger than 18	Drivers younger than 18	All drivers	Primary: for all offenses.	Yes
Ohio	Local option	Drivers younger than 18.	All drivers	Primary: for drivers younger than 18. Secondary: for texting by all drivers.	
Oklahoma	Learner's permit and intermediate license	School Bus Drivers and Public Transit Drivers	All Drivers. (Eff. Nov. 1,2015)	Primary: for all offenses.	Yes

States	Hand-held ban	All cell phone ban	Texting ban	Enforcement	Crash Data Collection
	holders, school bus drivers and public transit drivers				
Oregon	All drivers	Drivers younger than 18	All drivers	Primary: for all offenses.	Yes
Pennsylvania	Local option	No	All drivers	Primary: for texting by all drivers.	Yes
Puerto Rico	All drivers		All drivers	Primary: for all offenses.	
Rhode Island	No	School bus drivers and drivers younger than 18	All drivers	Primary: for all offenses.	Yes
South Carolina	No	No	All drivers	Primary	Yes***
South Dakota	No	Learner's permit and intermediate license holders (effective 07/01/14)	All drivers (effective 07/01/14)	Secondary: for all offenses. (effective 07/01/14)	Yes
Tennessee	No	School bus drivers, and learner's permit and intermediate license holders	All drivers	Primary: for all offenses.	Yes
Texas	Drivers in school crossing zones	Bus drivers. Drivers younger than 18	Bus drivers when a passenger 17 and younger is present; intermediate license holders for first 12 months, drivers in school crossing zones	Primary: for all offenses.	Yes
Utah	See footnote*	Drivers under the age of 18.	All drivers	Primary for texting; secondary for talking on hand-held phone	Yes
Vermont	All drivers (effective 10/2014)	Drivers younger than 18 shall not use any portable electronic device while driving.	All drivers	Primary: for all offenses.	
Virgin Islands	Yes				Yes
Virginia	No	Drivers younger than 18 and school bus drivers	All drivers	Primary: for texting by all drivers. (effective 07/01/13) Secondary: for drivers younger than 18.	Yes
Washington	All drivers	Learners permit and intermediate license holders.	All drivers	Primary: for all offenses.	Yes
West Virginia	All Drivers	Drivers younger than 18 who hold either a learner's permit or an intermediate license	All drivers	Primary: for all offenses.	
Wisconsin	No	Learner or Intermediate License holder	All drivers	Primary: for all offenses.	
Wyoming	No	No	All drivers	Primary: for all offenses.	Yes
Total	All drivers: 13 states and District of Columbia, Guam, Virgin Islands and Puerto Rico.	School Bus drivers: 20 states and District of Columbia. Teen drivers: 37 states and District of Columbia.	All Drivers: 44 states and District of Columbia, Guam, Virgin Islands and Puerto Rico.	Primary for all drivers texting: 39. Secondary for all drivers texting: 5	48 and U.S. Virgin Islands anc District of Columbia.

Source: ***Source Insurance Institute for Highway Safety 2013.***

Governor's Highway Safety Association

.* Utah considers speaking on a cell phone, without a hands-free device, to be an offense only if a driver is also committing some other moving violation (other than speeding).

** Maine has a law that makes driving while distracted a traffic infraction. 29-A M.R.S.A. Sec. 2117.

*** Listed as a part of contributing factors

Alaska Dispatch News

Published on *Alaska Dispatch News* (http://www.adn.com)

Devin Kelly [1]
November 10, 2015

Drivers caught texting behind the wheel in Anchorage now face a $500 fine but no threat of jail time as part of an ordinance approved Tuesday night by the Anchorage Assembly. It takes effect Jan. 1.

City officials said the change, approved in a 10-1 vote, is designed to make prosecution easier by changing a texting violation from a misdemeanor into a minor offense. Since 2011, just four people have been convicted of a misdemeanor charge of texting while operating a screen device in Anchorage, said city prosecutor Seneca Theno.

The law is not an outright cellphone ban while driving. It is designed to prevent drivers from using texting or apps on smartphones while behind the wheel.

In response to questions from Assembly members, Sgt. Roy LeBlanc, traffic unit supervisor in the Anchorage Police Department, also clarified that the violation for texting or using a screen device only applies while the driver has the vehicle in motion.

Assemblyman Ernie Hall noted that some states do ban cellphones entirely for drivers. He said the measure shouldn't be seen as a revenue-generator for the city.

"People that get caught while doing this -- the consequence (will be) great enough (that) it makes them think not only once or twice or three or four times before driving while texting," Hall said.

In a separate measure associated with traffic fine levels, the Assembly approved a proposal from Mayor Ethan Berkowitz to make sweeping inflation-based increases to some city fines and fees. That includes animal shelter fees, child care licenses and about 260 types of traffic tickets.

The measure passed 7-4, with Assembly members Bill Evans, Amy Demboski, Jennifer Johnston and Patrick Flynn opposing. Debate before the vote largely centered on the police fines and whether bigger fines would serve as a deterrent or be seen simply as a revenue-generating measure. The Assembly ultimately rejected an effort by Evans to keep the police fines unchanged.

The ordinance will net the city at least an estimated $1.2 million in revenue annually, Berkowitz administration officials said. The administration has emphasized more recently that the measures would improve driver behavior.

Assemblyman Bill Starr said he supported the measure because the costs of enforcement have gone up over the years, while the fines haven't. Officials said the fee and fine schedule has not been significantly updated since 2001.

Several Assembly members pointed out the $722,000 bump in estimated revenue from traffic tickets would come not from increased enforcement, but from officers writing the same number of tickets.

Both Evans and Johnston said the timing was an issue, and that the fines should be revised outside the city budget cycle. Assemblywoman Amy Demboski also said she was concerned the fine increases would have a disproportionate impact on lower-income residents.

As a result of the ordinance, speeding tickets will increase an average of 32 percent. The ordinance establishes flat fines for different speed categories, doing away with the old sliding scale method. That means a $90 fine for driving between 3 and 9 mph over the speed limit, and $180 for driving between 10 mph and 19 mph over the speed limit and $360 for driving between 20 mph and 29 mph over. Speeding fines will ramp up steadily from there.

Some types of fines, like operating a vehicle in violation of a provisional license, double; others increase only slightly. Fines for motorists, bicyclists and pedestrians are included in the revised schedule. One new addition: a $300 ticket for drag racing.

City fees are also increasing in restaurant permitting and food safety, Animal Care and Control, development services and the cemetery. The Department of Health and Human Services also introduced a new $50 licensing fee for home childcare facilities with eight or fewer children, as well as increased fees for larger facilities.

Licensing for child care centers have not increased since 1992, but labor costs have increased by 50 percent, the memo said.

Noise in neighborhoods and loud music being played in cars were also targeted for a fine increase. East Anchorage Assemblyman Pete Petersen introduced an amendment Tuesday night to raise noise violation fines, which he said was spurred by a constituent who called regularly last summer to complain about being awoken early in the morning by loud music.

Noise disturbances can now lead to a $250 fine, up from $150. A first violation for loud music in a car would be a $150 fine, up from $100, and leading to a maximum $1,500 fine after three violations in a year and the "forfeiture of the sound system or components of the sound system up to $1,000 in value," according to Petersen's amendment.

Sgt. LeBlanc told Assembly members that a car noise violation is defined by music that is clearly audible at 25 feet or more from the vehicle.

Had the Assembly not approved the fee and fine changes, the budget proposed by the Berkowitz administration would have been unbalanced, officials wrote in a memo to Assembly members.

Earlier in the evening, the Assembly held a second public hearing on the budget proposed by the Berkowitz administration. Several people testified on issues that included the number of animal control officers and improvements for the Anchorage Senior Center.

Assembly Vice-chair Elvi Gray-Jackson said Assembly members are being asked to turn in proposed budget amendments early Thursday morning. A work session has been set for 1 p.m. Friday.

***Correction**: This story has been edited to reflect that the $90 fine for speeding applies to speeds from 3 to 9 mph, not 1 to 9.*

Source URL: http://www.adn.com/article/20151110/anchorage-assembly-approves-new-texting-and-driving-penalty

Links:
[1] http://www.adn.com/author/devin-kelly

Alaska: Cell phone laws, legislation

JULY 3, 2008 BY EDITOR 4 COMMENTS

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Last updated: January 18, 2016 at 17:00 pm

Cell phone/text messaging update: Anchorage has established its own $500 fine for texting & driving, in a move that will encourage more prosecutions. As of Jan. 1, the offense moved from criminal court — as it was under the existing state distracted driving law — to the local traffic court. There have only been four texting convictions in the city since 2011. Alaska's state distracted driving offenses range from class A misdemeanors (simple texting) to class A felonies (causing a death) with offenders subject to jury trials. The plan was approved Nov. 10 in a 10-1 Anchorage Assembly vote.

CELL PHONE & TEXTING LAWS

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DISTRACTED DRIVING NEWS UPDATES

Indiana license plate: 'Put the Phone Down': We've all seen the bumper stickers that urge motorists to get off... https://t.co/d6WiT5qGfl January 15, 2016 3:34 am

Louisiana: Official blames distracted driving for some of nation's highest auto insurance rates. Also litigation. https://t.co/0IhAXZAR3D January 13, 2016 11:39 pm

Vermont plan: Allow cell phone searches: Citing enforcement problems, a Vermont legislator seeks to give polic... https://t.co/o7jMuAq6Fp January 13, 2016 8:46 am

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State Sen. Kevin Meyer has filed legislation for 2016 that also addresses the class A misdemeanor issue, seeking to lessen the offense to a traffic violation. The intent of Senate Bill 123 is to give law enforcement an easier path to cite violators. "Because the misdemeanor offense required prosecution and the involvement of the court system, very few people were ever penalized," a staffer for Meyer said in mid-January.

The state of Alaska has no limits on use of cell phones. In 2012, it took legislative action to close loopholes in its texting and driving law.

Current prohibitions:

- Drivers are prohibited from text messaging and "communicating" on computers.
- Drivers are barred from watching videos while behind the wheel.

Read the Alaska distracted driving law.

Distracted driving legislation (2015-2016):
Senate Bill 123: Makes electronic device offense while driving a traffic violation instead of a class A misdemeanor, if no injury occurs. (Meyer)

Distracted driving notes (2014)
The Senate in 2014 approved a plan that would allow municipalities to limit cell phone use near schools, but the measure failed the clear the House. The bill came from

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RECENT COMMENTS

Al Cinamon on New York: Cell phone laws, texting

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Bob T on Survey: Distractions still on the rise

Al Cinamon on New York: Cell phone laws, texting

Al Cinamon on Traffic deaths: 'Troubling increase' in 2015

Jason on Alberta: Distracted driving news

NEWS UPDATES FROM HFI

state Sen. Kevin Meyer, who also proposed barring texting in vehicles stopped at red lights and stop signs. The schools bill was OK'd by the full Senate in a 13-2 vote Feb. 14. It stalled in the House Judiciary Committee, however.

An Anchorage teenager was sentenced to a year in prison after pleading not guilty to manslaughter charges in the distracted driving death of a 27-year-old mother. In early 2013, Murphy Gross allegedly stole his father's SUV, smoked pot, received numerous cell phone calls and text messages before running a light and killing Cathy Cope. The actual sentence, handed down Nov. 13, 2014, was three years with two years suspended. Gross faced felony charges for texting because a death was involved.

State Sen. Kevin Meyer, a Republican who represents Anchorage, filed a bill to prohibit texting at red lights or stop signs "because the driver is distracted and can interfere with other traffic around them." That in-traffic texting by stopped drivers can result in "a very dangerous situation."

"Texting in any kind of traffic is distracted driving," Meyer says. Current Alaska law prohibits text messaging only if the vehicle is "in motion and the person is driving."

Meyer told Hands Free Info that his red-light bill had received "more negative comments (from legislators) than positive" as of late January.

Of his plan to allow municipalities to limit cell phone use near schools, Meyer said he took that approach because "some localities do not wish to have such an ordinance,"

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but state laws requiring uniform traffic rules prohibit those that do want a law. The Senate OK'd that plan.

2013-2014 distracted driving legislation:

Senate Bill 122: Would specify that text messaging is not allowed by drivers unless the vehicle is not on a roadway — must be "lawfully parked, standing or stopped." Current law permits texting if vehicle is not in motion. Stalled in State Affairs Committee. (Meyer)

SB 123: Would allow municipalities to adopt ordinances prohibiting use of cell phone while driving in school zones or on school property. Current law requires cities to demonstrate a special need for a local traffic law. Advanced by the Community and Regional Affairs Committee on Feb. 6. Approved by the Senate in a 13-2 vote of Feb. 14. To the House. Approved by the House Community and Regional Affairs Committee on Feb. 28. Stalled in Judiciary. (Meyer)

2013 distracted driving notes

An Army pilot stationed in Anchorage was awarded $375,000 after a policeman who allegedly was using his patrol car's computer plowed into his truck. The jury award for the 2010 accident came in June 2013. The officer admitted to previously running a red light while using the onboard computer.

2011-2012 legislation:

HB 255: Would prohibit all drivers from reading or typing a text message. Legislation comes in response to court rulings against existing law, whose wording does not specify text messaging as a prohibited activity for drivers. Amended to allow emergency personnel to view authorized wireless screen devices while driving, but in

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connection with a health, safety or criminal matter. Unanimously approved by the Transportation Committee on Jan. 27. Amended (added "takes effect immediately") and approved by the Judiciary Committee in a 4-1 vote Feb. 13 and then by the House in a 34-5 vote April 10. Approved unanimously by the Senate Judiciary Committee on April 13 and then by the full Senate in a 19-1 vote April 15. Signed by the governor. (Gara, Thomas)

House Bill 128: Would prohibit all cell phone use by drivers under the age of 18. Secondary enforcement. Amended (added July 1 effective date) and narrowly approved by the House Transportation Committee on March 1, 2012. Approved by a divided Judiciary Committee (3-3) on March 15. To the full House. Dead. (Gardner)

HB 22: Would ban handheld cell phone use by drivers in Alaska. Hands-free operation OK. Primary enforcement, meaning law officers do not need another reason to halt drivers. Cleared the House Transportation Committee on March 8, 2011. Dead. (Muñoz)

HB 35: Seeks to outlaw drivers' use of cell phones regardless of whether a hands-free attachment was employed. Only exception is for emergencies. Primary enforcement. No activity in over a year. Dead. (Doogan)

HB 68: Would bar drivers from using handheld cell phones in Alaska. Sponsor says he won't push for this bill and instead backs HB 22, above. No activity in over a year. Dead. (Gruenberg)

2011-2012 legislation notes:

Bipartisan legislation that removes any doubt that texting and driving is illegal in Alaska was approved in the final days of the 2012 legislative session. State Reps. Les Gara and Bill Thomas' HB 255 cleared the House and Senate in mid-April and was signed into law by the governor.

The ambiguous wording of Alaska's 2008 prohibition on texting & driving came back to haunt legislators when a judge ruled that the state needed to be more precise with the distracted driving law. The magistrate noted correctly that its wording never actually refers to "text messaging." (Read the Alaska texting law story.)

House Bill 255's full title is "An Act prohibiting the driver of a motor vehicle from reading or typing a text message or other nonvoice message or communication on a cellular telephone, computer, or personal data assistant while driving a motor vehicle."

At least four bills related to driving while using handheld cell phones in Alaska were up for consideration in the 2011-2012 legislative session, but none found success. A teen cell phone ban barely got through committee.

Rep. Mike Hawker cast a key vote in favor of the teen cell phone ban in the Judiciary Committee, even though he opposes it on libertarian grounds. "I represent my constituents, and I respect the counsel they've given me (in favor of the bill)," Hawker said. The bill died later in the session, however.

Rep. Berta Gardner, D-Achorage, said her teen cell phone ban HB 128 might pass because of the number of

distracted driving accidents involving young drivers: "I think we can build a consensus about cellphones with minors. ... This isn't a tough one to support." In committee, Gardner fended off suggestions that its secondary enforcement status be upgraded by saying police would pull over too many adults legally using cell phones because officers have difficulty determining the age of drivers.

Anchorage's chief of police says he's "the poster child" for distracted driving after he hit another vehicle from behind while fooling with his cell phone. The fender bender occurred at a light as it changed from red to green. No ticket resulted, but the city manager reportedly reprimanded top cop Mark Mew.

HB 35 sponsor Rep. Mike Doogan said: "This type of bill (cell phone) is going to be a tough bill to get passed in any form. People are just reluctant to pass legislation that actually affects real people on the ground. He was right. No distracted driving legislation advanced.

Doogan, D-Anchorage, told the Juneau Empire that the handheld cell phone legislation HB 22 from Rep. Cathy Muñoz, R-Juneau, had a better chance of passage than his measure because she is in the majority party. Rep. Max Gruenberg, D-Anchorage, agrees and says he won't pursue his own HN 68 in favor of the Muñoz plan.

A Department Of Public Safety rep says only a few citations have been written under the Alaska law that bans text messaging.

2009 legislation:
See HB 15, above.

2009 legislation notes:
Alaska's fiercely individualistic nature could make cell-phone driving laws a long shot. Even State Rep. Max Gruenberg, co-author of texting/video legislation, says he doesn't think Alaska is ready for a hands-free law.

The proposed cell phone ban on teenagers would be a secondary offense, meaning law officers would need another reason to pull over drivers under 18 using cell phones. The sponsors are Reps. Berta Gardner and Chris Tuck, both D-Anchorage.

Alaska's texting law took effect Sept. 1, 2008. Its prohibitions include drivers' use of televisions, monitors and portable computers, as well as installation of video screens within the sight of the driver. Six months later, State Troopers reported that only three motorists had been cited for the offense of text messaging while driving in Alaska. The law agency was investing in an ad campaign to warn of the dangers of texting while behind the wheel.

The texting/portable video law was inspired by a 2002 crash in which an Anchorage couple died. A man was accused of watching the movie "Road Trip" when he hit the couple, but he was acquitted of second-degree murder charges.

Anchorage activist Jennie Morris' next project could be cell phone use while driving, inspired by an accident in which she was hit by a 19-year-old on a cell phone.

2010 legislation notes:
Alaska's 2010 legislative session concluded April 18 without taking action on the proposed cell phone law.

The head of the House Judiciary Committee sought to water down Rep. Mike Doogan's HB 257, the cell phone legislation. Rep. Jay Ramras, R-Fairbanks, told the Anchorage Daily News that in order to clear his panel, the bill authored by Doogan, D-Anchorage, would have to change its goal from primary enforcement to secondary enforcement. "I don't think law enforcement needs more reasons to pull people over," Ramras said. (Primary enforcement means an officer can stop a motorist for that violation alone.)

Rep. Berta Gardner, D-Anchorage, says of her HB 15: "For all intents and purposes, the bill is dead." The measure has been stuck in the House Finance Committee for almost a year.

2010 legislation (dead):
Alaska House Bill 257: Would outlaw all uses of cellular phones while driving. Does not permit cell phone use if a hands-free device is attached. Primary enforcement. Fines up to $300 plus points. Stalled out in Judiciary Committee. (Doogan)

HB 15 (from 2009): Would prohibit the use of cell phones by drivers under the age of 18. Secondary enforcement. Fines up to $300. Filed in 2009. As of February 2010, the bill was technically alive but not scheduled for a hearing. Did not emerge from the Finance Committee, where it apparently died. (Gardner)

Alaska Dispatch News

Published on *Alaska Dispatch News* (http://www.adn.com)

Devin Kelly [1]
November 10, 2015

Drivers caught texting behind the wheel in Anchorage now face a $500 fine but no threat of jail time as part of an ordinance approved Tuesday night by the Anchorage Assembly. It takes effect Jan. 1.

City officials said the change, approved in a 10-1 vote, is designed to make prosecution easier by changing a texting violation from a misdemeanor into a minor offense. Since 2011, just four people have been convicted of a misdemeanor charge of texting while operating a screen device in Anchorage, said city prosecutor Seneca Theno.

The law is not an outright cellphone ban while driving. It is designed to prevent drivers from using texting or apps on smartphones while behind the wheel.

In response to questions from Assembly members, Sgt. Roy LeBlanc, traffic unit supervisor in the Anchorage Police Department, also clarified that the violation for texting or using a screen device only applies while the driver has the vehicle in motion.

Assemblyman Ernie Hall noted that some states do ban cellphones entirely for drivers. He said the measure shouldn't be seen as a revenue-generator for the city.

"People that get caught while doing this -- the consequence (will be) great enough (that) it makes them think not only once or twice or three or four times before driving while texting," Hall said.

In a separate measure associated with traffic fine levels, the Assembly approved a proposal from Mayor Ethan Berkowitz to make sweeping inflation-based increases to some city fines and fees. That includes animal shelter fees, child care licenses and about 260 types of traffic tickets.

The measure passed 7-4, with Assembly members Bill Evans, Amy Demboski, Jennifer Johnston and Patrick Flynn opposing. Debate before the vote largely centered on the police fines and whether bigger fines would serve as a deterrent or be seen simply as a revenue-generating measure. The Assembly ultimately rejected an effort by Evans to keep the police fines unchanged.

The ordinance will net the city at least an estimated $1.2 million in revenue annually, Berkowitz administration officials said. The administration has emphasized more recently that the measures would improve driver behavior.

Assemblyman Bill Starr said he supported the measure because the costs of enforcement have gone up over the years, while the fines haven't. Officials said the fee and fine schedule has not been significantly updated since 2001.

Several Assembly members pointed out the $722,000 bump in estimated revenue from traffic tickets would come not from increased enforcement, but from officers writing the same number of tickets.

Both Evans and Johnston said the timing was an issue, and that the fines should be revised outside the city budget cycle. Assemblywoman Amy Demboski also said she was concerned the fine increases would have a disproportionate impact on lower-income residents.

As a result of the ordinance, speeding tickets will increase an average of 32 percent. The ordinance establishes flat fines for different speed categories, doing away with the old sliding scale method. That means a $90 fine for driving between 3 and 9 mph over the speed limit, and $180 for driving between 10 mph and 19 mph over the speed limit and $360 for driving between 20 mph and 29 mph over. Speeding fines will ramp up steadily from there.

Some types of fines, like operating a vehicle in violation of a provisional license, double; others increase only slightly. Fines for motorists, bicyclists and pedestrians are included in the revised schedule. One new addition: a $300 ticket for drag racing.

City fees are also increasing in restaurant permitting and food safety, Animal Care and Control, development services and the cemetery. The Department of Health and Human Services also introduced a new $50 licensing fee for home childcare facilities with eight or fewer children, as well as increased fees for larger facilities.

Licensing for child care centers have not increased since 1992, but labor costs have increased by 50 percent, the memo said.

Noise in neighborhoods and loud music being played in cars were also targeted for a fine increase. East Anchorage Assemblyman Pete Petersen introduced an amendment Tuesday night to raise noise violation fines, which he said was spurred by a constituent who called regularly last summer to complain about being awoken early in the morning by loud music.

Noise disturbances can now lead to a $250 fine, up from $150. A first violation for loud music in a car would be a $150 fine, up from $100, and leading to a maximum $1,500 fine after three violations in a year and the "forfeiture of the sound system or components of the sound system up to $1,000 in value," according to Petersen's amendment.

Sgt. LeBlanc told Assembly members that a car noise violation is defined by music that is clearly audible at 25 feet or more from the vehicle.

Had the Assembly not approved the fee and fine changes, the budget proposed by the Berkowitz administration would have been unbalanced, officials wrote in a memo to Assembly members.

Earlier in the evening, the Assembly held a second public hearing on the budget proposed by the Berkowitz administration. Several people testified on issues that included the number of animal control officers and improvements for the Anchorage Senior Center.

Assembly Vice-chair Elvi Gray-Jackson said Assembly members are being asked to turn in proposed budget amendments early Thursday morning. A work session has been set for 1 p.m. Friday.

***Correction**: This story has been edited to reflect that the $90 fine for speeding applies to speeds from 3 to 9 mph, not 1 to 9.*

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MEMORANDUM February 24, 2016

SUBJECT: Electronic Devices while Driving
(SB 123; Work Order No. 29-LS1198\A)

TO: Senator Kevin Meyer
Attn: Edra Morledge

FROM: Hilary V. Martin
Legislative Counsel

You have asked nine questions related to SB 123.

1. *Where is it in statute that local laws cannot be more severe than state law, at least in reference to traffic laws?*

AS 28.01.010 states that traffic laws must be uniform throughout the state:

> (a) The provisions of this title and the regulations adopted under this title are applicable within all municipalities of the state. A municipality may not enact an ordinance that is inconsistent with the provisions of this title or the regulations adopted under this title. A municipality may not incorporate into a publication of traffic ordinances a provision of this title or the regulations adopted under this title without specifically identifying the provision or regulation as a state statute or regulation.

Under this section, any municipal ordinance that relates to the subject contained in AS 28 must be consistent with state law and regulation.[1]

2. *If SB 123 is adopted and it results in a lesser penalty than a borough or municipality has, does the local ordinance have to be changed?*

Under AS 28.01.010, all municipal traffic ordinances must be consistent with state law. This does not mean, however, that municipal ordinances have to be identical. The Alaska

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[1] The state can also pass a statute directing a municipality to comply with state law. In AS 28.01.010(j), a court cannot enforce a municipal ordinance prescribing a penalty for driving under the influence or refusal to submit to a chemical test unless the ordinance imposes ignition interlock device requirements under AS 28.

Court of Appeals has stated that a court "must consider the totality of the legislative framework within which the municipal ordinance and state statute are included."[2] The Court of Appeals further stated that when determining whether a municipal ordinance is inconsistent with state law, "the inquiry must focus on whether any discrepancy in the ordinance impedes or frustrates policy expressed in state law."[3]

In this situation, the question is whether a higher penalty for violation of a municipal ordinance is inconsistent with the lower penalty for the same conduct specified in state law. Under AS 11.81.900, a violation is defined as a "noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime. . . ." So the change in punishment from a misdemeanor, a criminal offense, to a violation, a non-criminal offense, is a significant change. In my opinion, if a municipality has a similar crime to AS 28.35.161, which is punished as a misdemeanor, and SB 123 passes, the municipality must lower their penalty as well to be consistent with state law.

3. *Who decides whether an individual will be charged under state or local law?*

A law enforcement officer can issue a citation for crimes within the officer's jurisdiction. It is my understanding that an Alaska State Trooper can only issue citations for violations of state law and not for violations of municipal ordinances. A municipal officer, however, can write tickets for violations of state and municipal law within the scope and authority of that officer's appointment. You may with to speak to the Department of Public Safety about the power of law enforcement officers to issue citations.

4. *If an individual in the Anchorage municipality is charged under state law, could the person argue for the lesser municipal penalty?*

While a person could certainly argue that the person should be punished under the lesser municipal penalty, this argument would probably fail. The state does not have the power to enforce municipal ordinances, so if a person is charged under state law, the punishment specified in state law would be applied.

5. *What are the double jeopardy implications for a person being charged both under local and state law?*

The general rule for double jeopardy is that if separate sovereigns are prosecuting a person for the same crime, then there is no double jeopardy violation. Therefore, the state and the federal government could charge the person for the same crime and this would not be a violation of double jeopardy. However, as a municipality is considered

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[2] *Simpson v. Municipality of Anchorage*, 635 P.2d 1197, 1200 (Alaska App. 1981).

[3] *Id.* at 1204.

the same sovereign as the state, it would be a violation of double jeopardy for both the state and a municipality to prosecute someone for the same crime.

In *Waller v. Florida*, the U.S. Supreme Court held that after conviction of a crime in municipal court, a subsequent state prosecution for crimes stemming from the same conduct as the municipal crime was barred by the double jeopardy clause of the U.S. Constitution.[4] In a later case interpreting whether two different states could try a person for the same offense, the Court stated:

> In those instances where the Court has found the dual sovereignty doctrine inapplicable, it has done so because the two prosecuting entities did not derive their powers to prosecute from independent sources of authority. Thus, the Court has held that successive prosecutions by federal and territorial courts are barred because such courts are "creations emanating from the same sovereignty." Similarly, municipalities that derive their power to try a defendant from the same organic law that empowers the State to prosecute are not separate sovereigns with respect to the State. These cases confirm that it is the presence of independent sovereign authority to prosecute, not the relation between States and the Federal Government in our federalist system, that constitutes the basis for the dual sovereignty doctrine.[5]

Because municipalities derive their power to create and enforce ordinances from the state, a municipality and the state could not both prosecute a person for the same crime.

6. *Under the language in SB 123, would a law enforcement officer have the discretion to issue a ticket in an amount less than $500?*

The officer who issues the citation does not have the discretion to determine the amount of the penalty for a violation of AS 28.35.161. The court would determine the amount of the fine under AS 12.55.035.

7. *Could the amount be negotiated or pled down in traffic court?*

If the person receives a citation, and decides to contest the citation in court, there is a possibility the person could receive a fine of less than $500. AS 12.55.035(b), states:

> (b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of not more than

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[4] 397 U.S. 387 (1970).

[5] *Heath v. Alabama*, 474 U.S. 82, 90 - 91 (1985).

. . .

(7) $500 for a violation.

Because the fine is for "not more than $500," the court has the discretion to lower the fine amount.[6]

8. *If we want the fine to be $500, does it need to be expressly stated in the bill?*

If you want the punishment for AS 28.35.161 to be a fine of $500, and not allow for a court to order a fine less than $500, then you should specify that amount in the bill itself.

9. *If we want to allow an individual to mail in their fine, does that need to be expressly stated in the bill?*

Under AS 28.05.151, the Alaska Supreme Court is required to determine by rule or order "those motor vehicle and traffic offenses, except for offenses subject to a scheduled municipal fine, that are amendable to disposition without court appearance and shall establish a scheduled amount of bail, not to exceed fines prescribed by law, for each offense." If a bail forfeiture amount is set, and if a person chooses not to contest the charges, the person can simply mail back the ticket with the bail forfeiture amount, and not have to appear in court. This is set out in AS 12.25.195:

> **Sec. 12.25.195. Disposition of scheduled offenses.** (a) If a person cited for an offense for which a scheduled amount of bail or a fine has been established does not contest the citation, the person may mail or personally deliver to the clerk of the court with appropriate jurisdiction if a bailable offense, or to the clerk of the municipality that issued the citation if a scheduled municipal fine, the amount of the bail or fine indicated on the citation for the offense together with a copy of the citation signed by the person indicating the person's waiver of court appearance, entry of plea of no contest, and forfeiture of bail or fine. The citation with the bail or fine shall be mailed or personally delivered on or before the 30th day after the date the citation was issued.
>
> (b) When bail or a fine is forfeited under this section, a judgment of conviction shall be entered. The bail or fine paid is complete satisfaction for the offense.
>
> (c) Disposition of an offense under (a) of this section may not occur unless the person cited for the offense pays the surcharge prescribed in AS 12.55.039 in addition to the scheduled bail or fine amount. The surcharge required to be paid under this subsection shall be deposited into the general fund and accounted for under AS 37.05.142.

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[6] While the court has the power to determine the amount of the fine up to $500, the surcharge required under AS 12.55.039 cannot be waived, deferred, or suspended.

There is currently no bail forfeiture amount set for AS 28.35.161, likely because the previous punishment was a class A misdemeanor.[7] Generally, the bail forfeiture amount is less than the maximum penalty for an offense. For example, AS 28.35.029, which prohibits driving with an open container, is an infraction. The penalty for an infraction under AS 28.90.010(c) is a fine not to exceed $300. In Rule 43.1, Alaska Rules of Administration, the bail forfeiture amount for AS 28.35.029 is $200.

Generally, the legislature has not specifically directed that the court add a particular offense to the bail forfeiture schedules. Once this bill is passed, the Alaska Supreme Court should add it to the bail forfeiture schedule. Therefore, it is not necessary to specify that a person should be able to mail back a fine.

If I may be of further assistance, please advise.

HVM:dla
16-206.dla

[7] The traffic bail forfeiture schedule is found in Rule 43.1, Alaska Rules of Administration.

LEGISLATIVE RESEARCH SERVICES

29th Alaska Legislature
LRS Report 16.175
February 23, 2016

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Alaska Municipal Ordinances Prohibiting Texting While Driving

Chuck Burnham, Manager

You asked which Alaska municipalities have ordinances prohibiting texting while driving.

Briefly, we searched the municipal codes of 22 Alaska municipalities and found only one—the Municipality of Anchorage—with an ordinance in place prohibiting texting while driving, as follows:[1]

> § Sec. 9.28.050 Driving a motor vehicle with a screen device operating.
>
> A. It is unlawful for a person to drive a motor vehicle in the municipality, in violation of AS 28.35.161(a), with a screen device operating.
>
> B. It is unlawful for a person to install or alter a screen device while in the municipality, in violation of AS 28.35.161(b).

In November 2015 the Anchorage Assembly amended Code Section 9.48.130 to change the penalty for driving a motor vehicle with a screen device operating from a misdemeanor to a traffic violation, which incurs a $500 fine. In doing so, city officials hope to make prosecution easier, as just four drivers had been successfully charged for texting while driving since 2011.[2] Most other municipal codes we reviewed in detail explicitly adopt state traffic laws and regulations and, in the absence of such provisions, the prohibition against texting while driving enumerated in AS 28.35.161(a) is nonetheless in effect.

We hope this is helpful. If you have questions or need additional information, please let us know.

---

[1] We reviewed the traffic codes of Anchorage, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Palmer, Sitka and Wasilla, and conducted key word searches in various combinations of the municipal codes of the following communities: Angoon, Cordova, Galena, Gustavus, Hoonah, Hydaburg, Kotzebue, North Slope Borough, Petersburg, Seward, Soldotna, Tanana, and Unalakleet.

[2] Devin Kelly, "Anchorage Assembly Approves New Texting-and-Driving Penalty," *Alaska Dispatch News*, November 10, 2015, *http://www.adn.com/article/20151110/anchorage-assembly-approves-new-texting-and-driving-penalty*.

(AO No. 82-205; AO No. 83-168, 10-17-83; AO No. 93-87(S-2), 1-1-94; AO No. 94-71(S), § 1, 4-26-94; AO No. 95-84(S-1), § 18, 4-27-95; AO No. 95-163(S), §§ 10—19, 8-8-95; AO No. 97-87, § 3, 6-3-97; AO No. 2001-51, § 1, 2-27-01; AO No. 2001-72, § 1, 7-1-02; AO No. 2001-139, § 2, 7-1-02; AO No. 2001-150, § 6, 8-28-01; AO No. 2003-73, §§ 12—14, 4-22-03; AO No. 2003-106, §§ 7, 8, 7-1-03; AO No. 2003-152S, § 2, 1-1-04; AO No. 2003-155, § 2, 6-1-04; AO No. 2004-61, § 1, 3-2-04; AO No. 2006-89(S), § 1, 6-6-06; AO No. 2006-115, § 1, 9-12-06; AO No. 2007-60, § 2, 11-1-07; AO No. 2007-161, § 3, 12-11-07; AO No. 2008-126, § 1, 1-6-09; AO No. 2010-76, § 4, 10-26-10; AO No. 2010-81(S-1), § 8, 12-7-10, eff. 1-1-11; AO No. 2012-16, § 3, 2-14-12, retro eff. 12-22-11; Ord. No. 2012-55, § 1, 7-10-12)

Section 3. Anchorage Municipal Code section 9.28.050, Driving a motor vehicle with a screen device operating, is hereby amended to read as follows (*the remainder of the section omitted is not affected and therefore not set out*):

9.28.050 Driving a motor vehicle with a screen device operating.

* * * * * * * * *

[C. VIOLATIONS OF THIS SECTION ARE PUNISHABLE UNDER SECTION 9.48.010D.]

(AO No. 2011-113(S), § 66, 11-22-11, eff. 12-22-11)

Section 4. Anchorage Municipal Code section 9.48.010, Penalties, is hereby amended to read as follows (*the remainder of the section omitted is not affected and therefore not set out*):

9.48.010 Penalties.

* * * * * * * * *

C. Any person convicted of violating the following sections shall be punished by imprisonment for not more than 90 days, or by a fine of not more than $2,000.00, or by both such fine and imprisonment:

* * * * * * * * *

[4. CHAPTER 9.28 (SERIOUS TRAFFIC OFFENSES): SECTIONS 9.28.030A.]

D. Any person convicted under the following sections shall be punished by imprisonment for not more than one year, or by a fine of not more than $10,000.00, or by both such fine and imprisonment:

* * * * * * * * *

2. Chapter 9.28 (Serious Traffic Offenses): Sections 9.28.010, 9.28.011, 9.28.019B., 9.28.020, <u>and</u> 9.28.022C.[, AND 9.28.050.]

* * * * * * * * *

(CAC 9.48.010; AO No. 267-76; AO No. 78-72; AO No. 82-126; AO No. 82-186(S); AIM 33-83; AO No. 83-168; AO No. 84-60; AO No. 89-52; AO No. 99-15, § 2, 2-9-99; AO No. 2003-73, § 17, 4-22-03; AO No. 2004-151, § 2, 1-1-05; AO No. 2006-89(S), § 3, 6-6-06; AO No. 2009-61, § 7, 7-7-09; AO No. 2011-113(S), § 155, 11-22-11, eff. 12-22-11; AO No. 2012-16, §§ 2, 5, 2-14-12, retro eff. 12-22-11; AO No. 2014-42, § 24, 6-21-14)

Section 5. Anchorage Municipal Code section 9.48.130 is hereby amended to read as

follows (*the remainder of the section omitted is not affected and therefore not set out*):

9.48.130 Traffic offenses fine schedule.

In accordance with AS 28.05.151, a citation issued for violation of any of the following sections of this title shall be subject to disposition with payment of a fine in lieu of a court appearance or as otherwise prescribed. Violations committed within a highway work zone or a traffic safety corridor shall be subject to double the fine amount indicated. Pursuant to AS 28.05.151(e), an offense listed on this schedule may not be disposed of without court appearance if the offense is in connection with a motor vehicle crash that results in the death of a person. Notwithstanding any other provision of this Code, fines stated as an amount per mile over a designated speed limit established under chapter 9.26 are calculated according to the fine schedule and not subject to the maximum fine amount in this section 9.48.010A.

Title	Section	Fine amount
*** *** ***	*** *** ***	*** *** ***
SERIOUS TRAFFIC OFFENSES		
*** *** ***	*** *** ***	*** *** ***
Driving w/o proof of insurance or other security	9.28.030A[B]	Corr./500.00
*** *** ***	*** *** ***	*** *** ***
Driving with a screen device operating	9.28.050	500.00
*** *** ***	*** *** ***	*** *** ***

(CAC 9.48.060; AO No. 78-72; AO No. 88-12; AO No. 88-167; AO No. 88-180; AO No. 89-134; AO No. 90-24; AO No. 94-68(S), § 38, 8-11-94; AO No. 95-67(S), § 5, 7-1-95; AO No. 95-102, § 1, 4-26-95; AO No. 95-117, § 3, 6-29-95; AO No. 95-163(S), § 20, 8-8-95; AO No. 99-15, § 1, 2-9-99; AO No. 2000-130, § 2, 9-12-00; AO No. 2001-51, § 1, 2-27-01; AO No. 2001-145(S-1), § 8, 12-11-01; AO No. 2003-157, § 2, 12-17-03; AO No. 2004-63, § 2, 4-13-04; AO No. 2011-113(S), § 160, 11-22-11, eff. 12-22-11; AO No. 2012-16, § 6, 2-14-12, retro eff. 12-22-11; AO No. 2013-41(S-1), § 2, 4-23-13; AO No. 2014-42, § 26, 6-21-14)

Section 6. This ordinance shall be effective January 1, 2016.

PASSED AND APPROVED by the Anchorage Assembly this 10th day of November, 2015.

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Chair of the Assembly

ATTEST:

_____
Municipal Clerk

9.28.050 - Driving a motor vehicle with a screen device operating.

A. It is unlawful for a person to drive a motor vehicle in the municipality, in violation of AS 28.35.161(a), with a screen device operating.

B. It is unlawful for a person to install or alter a screen device while in the municipality, in violation of AS 28.35.161(b).

C. Violations of this section are punishable under section 9.48.010 D. (AO No. 2011-113(S), § 66, 11-22-11, eff. 12-22-11)

Anchorage ordinance

Alaska Statutes - Section 28.35.161.: Driving a motor vehicle with a screen device operating; unlawful installation of television, monitor, or similar device.

(a) A person commits the crime of driving with a screen device operating if

(1) the person is driving a motor vehicle;

(2) the vehicle has a television, video monitor, portable computer, or any other similar means capable of providing a visual display that is in full view of a driver in a normal driving position while the vehicle is in motion; and

(3) the monitor or visual display is operating while the person is driving.

(b) A person may not install or alter equipment described in (a)(2) of this section that allows the images to be viewed by the driver in a normal driving position while the vehicle is in motion.

(c) Subsections (a) and (b) of this section do not apply to

(1) portable cellular telephones or personal data assistants being used for verbal communication or displaying caller identification information;

(2) equipment that is displaying only

(A) audio equipment information, functions, and controls;

(B) vehicle information or controls related to speed, fuel level, battery charge, and other vehicle safety or equipment information;

(C) navigation or global positioning;

(D) maps;

(E) visual information to

(i) enhance or supplement the driver's view forward, behind, or to the sides of the motor vehicle for the purpose of maneuvering the vehicle; or

(ii) allow the driver to monitor vehicle occupants seated behind the driver;(F) vehicle dispatching and response information for motor vehicles providing emergency road service or roadside assistance;

(G) vehicle dispatching information for passenger transport or freight or package delivery; or

(H) information for use in performing highway construction, maintenance, or repair or data acquisition by the Department of Transportation and Public Facilities or a municipality.

(d) Subsections (a) and (b) of this section do not apply to devices and equipment installed in an emergency vehicle. In this subsection, "emergency vehicle" means a police, fire, or emergency medical service vehicle.

(e) It is an affirmative defense to a prosecution under (b) of this section that the equipment installed or altered includes a device that, when the motor vehicle is being driven, disables the equipment for all uses except those described in (c) of this section.

(f) A person who violates (a) of this section is guilty of

(1) a ~~class A misdemeanor~~ **violation**, unless any of the circumstances described in (2) - (4) of this subsection apply;

(2) a class C felony if the person's driving causes physical injury to another person;

(3) a class B felony if the person's driving causes serious physical injury to another person;

(4) a class A felony if the person's driving causes the death of another person.

(g) A person who violates (b) of this section is guilty of a class A misdemeanor.