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**SENATE BILL NO. 16**

Offered January 11, 2006

Prefiled December 12, 2005

A *BILL to amend the Code of Virginia by adding a section numbered 46.2-1078.1, relating to use of handheld mobile telephones while operating motor vehicles; study by Department of Motor Vehicles; collection of certain data by Crash Investigation Team.*

Patron—Marsh

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 46.2-1078.1 as follows:**

*§ 46.2-1078.1. Use of handheld mobile telephones while operating a motor vehicle prohibited.*

*For purposes of this section, the following terms shall have the following meanings:*

*"Engage in a call" means talking into or listening on a handheld mobile telephone, but does not include holding a mobile telephone to activate, deactivate, or initiate a function of such telephone.*

*"Handheld mobile telephone" means a mobile telephone with which a user engages in a call using at least one hand.*

*"Hands-free mobile telephone" means a mobile telephone that has an internal feature or function, or is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.*

*"Immediate proximity" means a distance that permits the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but does not require physical contact with such operator's ear.*

*"Mobile telephone" means the device used by subscribers and other users of wireless telephone service to access such service.*

*"Using" means holding a mobile telephone to, or in the immediate proximity of, the user's ear.*

*"Wireless telephone service" means two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. S 20.3.*

*Except as otherwise provided in this section, no person shall operate a motor vehicle upon a public highway while using a handheld mobile telephone to engage in a call while such vehicle is in motion.*

*An operator of a motor vehicle who holds a mobile telephone to or in the immediate proximity of his ear while such vehicle is in motion shall be presumed to be engaging in a call within the meaning of this section. This presumption, however, shall be rebuttable by evidence tending to show that the operator was not engaged in a call.*

*The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.*

*The provisions of this section do not apply to (i) the use of a handheld mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: a rescue squad; a hospital or physician's office; an ambulance service or ambulance service provider; a fire department or a law-enforcement officer or agency; (ii) any of the following persons while in the performance of their official duties: a law-enforcement officer; a firefighter; or the operator of an ambulance, rescue squad vehicle, or rescue vehicle; or (iii) the use of a hands-free mobile telephone.*

*For the purpose of informing and educating persons who operate motor vehicles in the Commonwealth, any law-enforcement officer authorized to enforce the provisions of this title may, during the month of July 2006, stop motor vehicles and issue verbal warnings to persons who would be in violation of the provisions of this section, were the provisions of this section effective when such warning is issued.*

*Any fine imposed for a violation of any provision of this section shall be suspended for violators who, subsequent to the violation but prior to imposition of the fine, supply the court with proof that, subsequent to the violation but prior to imposition of the fine, they possess a hands-free mobile telephone; however, no such suspension shall be granted for second or subsequent violations of this section.*

**2. That the Commissioner of the Department of Motor Vehicles, in consultation with the Superintendent of State Police, shall study the effects of the use of mobile telephones and similar equipment in conjunction with the operation of motor vehicles and the effects of other forms of**

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59 driver inattention and distraction on highway and traffic safety and submit a report of his  
60 findings to the Governor and the 2010 Regular Session of General Assembly. Such report shall  
61 include, but not necessarily be limited to, (i) an examination of motor vehicle accident, fatality,  
62 and injury statistics relating to the use of mobile telephones or similar equipment while operating  
63 a motor vehicle; (ii) an examination of motor vehicle accident, fatality, and injury statistics  
64 relating to other forms of driver inattention and distraction; (iii) a review and analysis of studies  
65 examining the effects of the use of mobile telephones or similar equipment on highway and traffic  
66 safety; (iv) a review and analysis of studies and statistics relating to other types of driver  
67 inattention and distraction that affect highway and traffic safety; and (v) recommendations for  
68 reducing the number of motor vehicle accidents related to driver inattention and distraction.

69 3. That the Virginia Crash Investigation Team of Virginia Commonwealth University's  
70 Transportation Safety Training Center shall include in its summary of motor vehicle accident  
71 statistics information relating to the types and frequencies of driver inattention that contribute to  
72 or were a factor in motor vehicle crashes in the Commonwealth.

73 4. That the provisions of this act shall become effective on August 1, 2006.#