

Issue Brief

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Distracted Drivers: State Lawmakers Attempt to Crack Down On Driving, Wireless Communications Devices

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Introduction

Three out of four Americans now own a cellular phone,¹ and it is estimated that during any given daylight moment, as many as 974,000 vehicles on the road are being driven by someone with a hand-held phone.²

Given this reality, it may help to explain, in part, why lawmakers in 34 states this year have introduced more than 80 bills in an attempt to crack down on drivers who use cellular phones and other wireless communication devices while driving.³

At this writing, 11 bills have either become law or are awaiting a governor's signature. They include two Washington state bills – House Bill 1214 and Senate Bill 5037 – as well as two Maine bills – Legislative Document 161 and Legislative Document 576. The other enactments include Illinois House Joint Resolution 22, Kentucky House Bill 230, Nebraska Legislative Bill 415, Tennessee House Bill 275, Texas House Bill 3832, Virginia Senate Bill 1039 and West Virginia Senate Bill 412.

This *Issue Brief* looks at each enactment as well as the specific “targets” of the other legislative proposals. The brief concludes by offering some observations on the distracted driver issue.

Text-Messaging

Washington became the first state in the country to enact a bill on text messaging when Gov. Christine Gregoire signed House Bill 1214 into law on May 11. The bill takes effect Jan. 1, 2008.⁴

HB 1214 was introduced by Republican state Rep. Joyce McDonald, who says she became concerned about the issue after hearing reports of a five-car and bus pileup on Interstate 5 near Seattle in December 2006. The driver responsible for the crash apparently had taken his eyes off the road to use an electronic wireless communications device.⁵

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As originally drafted, the McDonald bill said a person operating a moving motor vehicle while “reading, manually writing, or sending a message on an electronic wireless communications device” would be guilty of a traffic infraction and could be fined up to \$250. The bill did not apply to anyone operating an authorized emergency vehicle; reporting illegal activity; summoning medical or other emergency help; or preventing injury to a person or property.

As the bill made its way through the legislative process, though, a few amendments were added. One makes the law a secondary action, which means it only can be applied after a law enforcement officer has detained a driver for a primary offense. Another amendment prohibits infractions from becoming part of an individual’s driving record, while a third amendment says that any information about the infraction shall not be made available to insurance companies or employers.

Five other states – Connecticut, Florida, Hawaii, Maryland and Tennessee – each considered text messaging bills during their legislative sessions, but none moved forward before adjournment.

At this writing, five states still in session are also considering text messaging bills. They include California, Delaware, New Jersey, New York and Oregon. Only the bills in California and Oregon appear to be moving at this point.

California Senate Bill 33⁶ is part of a broader bill that prohibits the use of cellular phones while driving. Oregon House Bill 2872⁷ applies to persons under 18 who drive and use a mobile communication device, the definition of which includes text messaging. The bill, which is before a conference committee at this writing, would make any offense a Class D traffic violation and punishable with a maximum \$90 fine.

Total Prohibition

Washington also had the distinction this year of becoming the fifth state, along with the District of Columbia, to enact a law banning the use of a hand-held cellular phone while driving. Senate Bill 5037⁸ takes effect on July 1, 2008.

The legislator behind the bill was Democratic state Sen. Tracey Eide, who, for seven years, had sponsored a bill restricting the use of hand-held cellular phones while driving,

SB 5037 makes operating a moving motor vehicle while holding a wireless communications device a traffic infraction. Law enforcement officers are restricted to only enforcing it as a secondary offense. Any infractions that result are also prohibited from becoming part of the driver’s record, and information about the infraction also shall not be made available to insurance companies or employers.

Sen. Eide said her position on the bill had been bolstered by a survey taken in 2005 by PEMCO Insurance showing 80 percent of those polled believed using a cell phone while driving should be illegal or restricted to a hands-free device. She added that a more recent PEMCO survey had shown support for the restriction had increased to 85 percent.⁹

In all, 21 states introduced some type of legislation that would prohibit the use of cellular phones while driving.⁹

Teen Drivers

Four states – Maine, Nebraska, Virginia and West Virginia – each passed legislation this year to prohibit teens from driving and using cellular phones at the same time.

Probably the most intrigue associated with any of these bills came in Nebraska, where state Sen. John Harms, a retired educator, introduced Legislative Bill 415.¹¹ While the bill was intended to make several changes to the state’s law governing provisional learner’s permits and provisional operator’s licenses, LB 415 also had a provision prohibiting a person with a provisional learner’s permit or school permit from using interactive wireless communication devices, including cellular phones, when driving. The law, which takes effect on Sept. 1, treats any violation as a secondary offense.

The bill easily passed the Legislature, but was vetoed by Republican Gov. Dave Heineman, who stated in his veto message that LB 415 “substitutes the wisdom,

judgment and responsibility of parents with that of state government,” and noted potential difficulties with enforcement.

Harms responded that he’d heard from parents who were grateful that someone was setting a standard. “We have a responsibility to protect the very future, and that’s our teenagers,” Harms said.¹²

The motion to override the veto passed by a 33-7 vote.

Maine Legislative Document 161,¹³ which was introduced by Democratic state Rep. George Hogan, prohibits a person who has not attained 18 years of age from operating a motor vehicle while using a mobile telephone or hand-held electronic device. A person who violates this law commits a traffic infraction that is subject to a \$50 fine for the first offense and not less \$250 for a second or subsequent offense. LD 161 takes effect 90 days after adjournment.

In Virginia, Republican state Sen. Jay O’Brien succeeded in seeing Senate Bill 1039¹⁴ become law. It takes effect July 1.

SB 1039 prohibits a provisional driver from operating a motor vehicle while using any cellular phone or other wireless telecommunications device, regardless of whether the device is or is not hand-held. A violation of this law is considered a traffic infraction and a subsequent violation could result in the juvenile’s privilege to drive being suspended for six months.

The West Virginia legislation, Senate Bill 412,¹⁵ was introduced by Democratic state Sen. Jeffrey Kessler. It prohibits the holder of a learner’s permit under the age of 18 from using a wireless communication device while operating a motor vehicle.

Any violation of the law is enforced only as a secondary offense; however, if a person is convicted of the offense, the persons is guilty of a misdemeanor and shall pay a \$25 fine for a first offense, \$50 for a second offense, and \$75 for a third or subsequent offense.

Fifteen states and the District of Columbia now restrict the use of cellular phones by young drivers.¹⁶

Video Devices

Tennessee and Texas each enacted a law this year to clarify existing laws related to the use of video recording equipment within the sight of drivers.

In Tennessee, Republican state Rep. Charles Michael Sargent initially introduced House Bill 275¹⁷ to help clarify existing state law regarding the use of a television screen or other device that may be visible to a driver while operating a motor vehicle.

Sargent’s language was intended to be more specific. It states: “A person shall not operate (or install) a motor vehicle with a television receiver, a video monitor, or a television or video screen capable of displaying a television broadcast or video signal that produces entertainment or business applications, if such receiver, monitor or screen is intended to display images visible to the driver in a normal position when the vehicle is in motion.”

Three amendments were added to the bill as it made its way through the legislative process. Each is an exemption. One allows the driver to use a cell phone or communication device to place or receive telephone calls, a second allows a television receiver, video monitor, television or video screen as long as it is not visible to the driver, and the final amendment allows electronic monitors or displays to be used when livestock is being monitored. HB 275 takes effect on July 1.

In Texas, Democratic state Rep. Joe Farias introduced House Bill 3832¹⁸ to amend an existing statute that further clarifies when certain video receiving equipment can be viewed by a driver.

The new language reads: “A motor vehicle may be equipped with video receiving equipment, including a television, a digital video disc player, a videocassette player, or similar equipment, only if the equipment is located so that the video display is not visible from the operator’s seat *unless the vehicle’s transmission is in park or the vehicle’s parking brake is applied* [italics indicates new language].

The bill takes effect on Sept. 1.

In all, nine states¹⁹ introduced 13 bills dealing with the use of video equipment within the view of the driver. Among the remaining states, only New York Senate Bill 634²⁰ appears to be moving through the legislative process. It passed the Senate on June 6 and has been forwarded to the Assembly.

School Bus Drivers

Democratic State Rep. Royce Adams was responsible for introducing House Bill 230²¹ in Kentucky this year. The bill, which takes effect on June 26, prohibits a person operating a school bus from using a cellular phone while the bus is in motion and carrying school children. Exemptions are allowed where the bus does not contain a functioning two-way radio or in the case of an emergency.

A bus driver violating HB 230 shall be fined \$50 for a first offense, while the fine for a subsequent offense is \$100 with the driver losing his or her school bus endorsement for six months.

In addition to Kentucky, lawmakers in Hawaii, Maryland and Texas also introduced similar legislation, but none of those bills moved forward before the states adjourned for the year. Twelve other states, plus the District of Columbia, already prohibit the use of cellular phones while driving a school bus.²²

School Zones

Five states – Florida, Louisiana, Mississippi, Pennsylvania and Tennessee – introduced bills to prohibit the use of cellular phones in school zones during posted hours with certain exceptions for public safety or law enforcement entities, persons in a parked motor vehicle, or emergency personnel in the performance of their duty.

Only the Pennsylvania bill, House Bill 600,²³ remains active, although it has yet to move out of committee.

The history of Louisiana House Bill 99²⁴ may be illustrative of problems associated with enacting this type of legislation. Republican state Rep. A.G. Crowe introduced the bill, which was referred to the Committee on Transportation, Highways and Public Works, where, except for a minor technical amendment, it was unanimously reported out of the committee.

On the House floor, Democratic state Rep. Wilfred Pierre amended the bill, removing all references to “school zones,” thus extending the prohibition against using cellular phones. As a result, the bill subsequently was defeated by a 48 to 43 vote on third reading.

Distracted Driver Studies

Maine Democratic state Rep. Christopher Babbidge, a high school history teacher, initially introduced Legislative Document 576²⁵ to have the Department of Public Safety study the effect of cellular phones on motor vehicle accidents.

The bill was subsequently amended to require the department to analyze available data, including data from its upgraded crash reports, to determine the role various types of distractions play in motor vehicle accidents. The department is also directed to submit an interim report of its findings to the Legislature by Jan. 15, 2009. A final report is due the following year when legislation shall be submitted based on the department’s report. LD 576 was signed into law on June 18.

A similar study report is envisioned in Illinois House Joint Resolution 22,²⁶ which passed the Illinois House of Representatives on April 19. It calls for the creation of a 10-member Distracted Drivers Task Force that will present a report and recommendations to the General Assembly no later than July 1, 2008.

Conclusion

This analysis of enacted laws dealing with distracted drivers has shown the issue to be bipartisan in that an equal number of Democrats and Republican lawmakers around the country introduced legislation this year in an attempt to address the issue.

The analysis also has shown that enacting a law totally prohibiting the use of a hand-held cellular phone while driving remains a difficult lift, and that a more “piecemeal” approach appears to be favored by lawmakers. Even then, it appears there is sometimes little unanimity among lawmakers over the specifics of a particular legislative proposal and clear attempts to “deep six” a proposal as it makes its way through the legislative process.

Clearly, lawmakers have focused much of their attention on teen drivers. This is consistent with recent studies conducted by Nationwide and Liberty Mutual, which have shown that cellular phone use was highest among teen drivers and text messaging is the biggest distraction.²⁷

Finally, as wireless communication devices continue to proliferate, the analysis also has shown the difficulties that lawmakers are having in drafting statutory language that adequately describes the new technologies.

Endnotes

¹This figure comes from statistics compiled by CTIA, the Wireless Association, an international nonprofit membership organization founded in 1984, and representing all sectors of wireless communications. Learn more about CTIA at: www.ctia.org.

²This figure comes from, “Driver Cell Phone Use in 2005 – Overall Results,” a publication produced in December 2005 by the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration. The study can be accessed at: www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/RNotes/2005/809967.pdf. The NHTSA also has produced an April 2006 study, “The Impact of Driver Inattention on Near Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data,” which showed that nearly 80 percent of crashes and 65 percent of near-crashes involved some form of driver inattention within three seconds before the event with the primary causes being cell phone usage and drowsiness. The report can be accessed at: www-nrd.nhtsa.dot.gov/departments/nrd-13/810594/images/810594.pdf.

³The author primarily relied on the Distracted Driving database compiled by the National Conference of State Legislatures and the NHTSA. It can be accessed at: www.nhtsa.dot.gov/ncsl/Index.cfm.

⁴Washington House Bill 1214 can be accessed at: www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/Session%20Law%202007/1214.SL.pdf.

⁵McDonald’s comments on HB 1214 can be accessed at: www.housepublicans.wa.gov/mcdonald/newsroom/070511.htm.

⁶California Senate Bill 33 can be accessed at: www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0001-0050/sb_33_bill_20070613_amended_asm_v95.html.

⁷Oregon House Bill 2872 can be accessed at: www.leg.state.or.us/cgi-bin/searchMeas.pl.

⁸Washington Senate Bill 5037 can be accessed at: www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/Session%20Law%202007/5037-S.SL.pdf. The other states that have enacted a total prohibition against hand-held cellular phones include California, Connecticut, New York and New Jersey.

⁹Sen. Eide’s comments can be found at: <http://sdc.leg.wa.gov/2007/releases/Eide/cellphones2.htm>.

¹⁰Information about legislative enactments has been compiled by the Insurance Institute for Highway Safety and Highway Loss Data Institute. See www.iihs.org/laws/state_laws/cell_phones.html.

¹¹Nebraska Legislative Bill 415 can be accessed at: <http://uniweb.legislature.ne.gov/FloorDocs/Current/PDF/Intro/LB415.pdf#xml=http://srvwww.unicam.state.ne.us/dtSearch/dtisapi6.dll?cmd=getpdfhits&u=5e148da&DocId=450&Index=E%3a%5cIndexes%5c100th%20%2d%20Introduced%20Bills&HitCount=28&hits=2+4+d+e+f+1f+80+82+2af+2b1+42e+430+666+668+7c8+7ca+9ff+a01+b46+b48+cde+df5+df7+f76+f78+111c+111e+&SearchForm=c%3a%5cnetpub%5cwwwroot%5cunicamAllDrafting%5fform%2ehtml&pdf>.

¹²Sen. Harms’ comments can be found at: www.unicam.state.ne.us/web/public/update/transtelecom/lb415/v.

¹³Maine Legislative Document 161 can be accessed at: <http://janus.state.me.us/legis/LawMakerWeb/externalsiteframe.asp?ID=280022484&LD=161&Type=1&SessionID=7>.

¹⁴Virginia Senate Bill 1039 can be accessed at: <http://leg1.state.va.us/cgi-bin/legp504.exe?071+ful+CHAP0777>.

¹⁵West Virginia Senate Bill 412 can be accessed at: www.legis.state.wv.us/Bill_Text_HTML/2007_SESSIONS/RS/BILLS/sb412%20enr.htm.

¹⁶See IIHS data reported in footnote 10.

¹⁷Tennessee House Bill 275 can be accessed at: www.legislature.state.tn.us/bills/currentga/Chapter/PC0007.pdf.

¹⁸Texas House Bill 3832 can be accessed at: www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/HB03832F.pdf.

¹⁹See IIHS citation in footnote 10.

²⁰New York Senate Bill 634 can be accessed at: <http://assembly.state.ny.us/leg/?bn=S00634&sh=t>.

²¹Kentucky House Bill 230 can be accessed at: www.lrc.ky.gov/record/07RS/HB230/bill.doc.

²²See IIHS citation in footnote 10.

²³Pennsylvania House Bill 600 can be accessed at: www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2007&sessInd=0&billBody=H&billTyp=B&billNbr=0600&pn=0666.

²⁴Louisiana House Bill 99 can be accessed at: www.legis.state.la.us/billdata/streamdocument.asp?did=432736.

²⁵Maine Legislative Document 576 can be accessed at: <http://janus.state.me.us/legis/LawMakerWeb/externalsiteframe.asp?ID=280023079&LD=576&Type=1&SessionID=7>.

²⁶Illinois House Joint Resolution 22 can be accessed at: www.ilga.gov/legislation/95/HJR/PDF/09500HJ0022lv.pdf.

²⁷References to the Nationwide and Liberty Mutual studies can be found in the Insurance Information Institute brief on “Cell Phones and Driving.” It can be accessed at: www.ilga.gov/legislation/95/HJR/PDF/09500HJ0022lv.pdf.