

# Insight

## IN-DEPTH DISCUSSION

JUNE 21, 2017

## Texas Passes Ban on Texting While Driving

BY GARY CLAYTON

On June 6, 2017, Texas became the 47th state to enact a state-wide ban on texting while driving. The new law (HR 62) prohibits drivers from reading, writing or sending electronic messages unless the vehicle is stopped. It does not, however, prohibit dialing a number to call someone, setting a GPS device, listening to music programs or even surfing on the Internet.

Under the new law, you cannot be arrested for the sole offense of “texting while driving.” In order to be prosecuted, HR 62 requires the violation to be committed “in the presence of or within the view of a peace officer or established by other evidence.”<sup>1</sup> A driver’s first offense is punishable by a fine between \$25 and \$99. Any subsequent offenses will carry a fine between \$100 and \$200. Additionally, the Department of Motor Vehicles is not authorized to assign points to a driver’s license for a “texting while driving offense.”

Punishment under HR 62 becomes much stricter if, at trial for the offense, it is shown that the defendant caused the death or serious bodily injury of another person. In such a situation, the offense will become a Class A misdemeanor punishable by a fine not to exceed \$4,000 and confinement in jail for a term not to exceed one year. Additionally, if the conduct constituting the offense is also a violation of another law, the defendant may be prosecuted under either law, or both.

### Potential Defenses

- A driver may have a defense to prosecution if the driver was:
- Using a hands-free device<sup>2</sup> including voice-operated technology;
- Reporting illegal activity or summoning emergency help;

---

1 See Tex. Trans. Code, § 545.4251 (available at <http://www.legis.state.tx.us/tlodocs/85R/billtext/pdf/HB00062F.pdf#navpanes=0>).

2 Under HB 62, a “hands-free device” is defined as a feature or attachment that allows use of a wireless communication device without use of either of the operator’s hands. A “wireless communication device” is defined as a device, such as a cell phone, that uses a commercial mobile service.

- Reading an electronic message that the person reasonably believed concerned an emergency; or
- Relaying information to a dispatcher or digital network through a device affixed to the vehicle as part of the driver's job.

The law would not apply to drivers of authorized emergency or law enforcement vehicles acting in an official capacity. It also would not apply to drivers licensed by the Federal Communications Commission operating a radio frequency device other than a portable wireless communication device.

HR 62 prohibits the seizure or inspection of a driver's cell phone by a peace officer unless it is authorized by another law. Finally, HR 62 also prohibits the Texas Department of Motor Vehicles from assigning points to a driver's license for a texting-while-driving offense.

## Special Session

Governor Abbot is calling a special session of the Texas legislature starting July 18 to consider amendments to the new law. Abbott wants to block local governments from any regulation of mobile devices. This would nullify tougher cellphone regulations that are currently in place in about 40 Texas cities including Austin, San Antonio and El Paso. In these cities, drivers are required to use hands-free devices for phone calls.

State Rep. Tom Craddick, (R-Midland) who authored HR 62, opposes such pre-emption because he believes it would weaken mobile usage laws throughout the state. Craddick believes that such issues should be left to local governments. He says it will be difficult to predict how the pre-emption proposal will fare since during the recent legislative session, many legislators seemed adamant about letting cities regulate the issue.

## Keeping Your Eyes on the Road

Individuals who drive while sending or reading a text message are 23 times more likely to be involved in a car crash than other drivers. According to the Virginia Tech Transportation Institute, texting while driving is six times more likely to cause an auto crash than driving while intoxicated.<sup>3</sup>

The Occupational Safety and Health Administration (OSHA) has made it clear that it is an employer's responsibility and legal obligation to have a clear, unequivocal and enforced policy against texting while driving. Companies that require texting while driving, create incentives that encourage or condone texting while driving, or structure work so that texting while driving is a practical necessity for workers to carry out their jobs, may be subject to citations and penalties.

Employers should establish clear policies that unequivocally prohibit texting while operating any kind of motorized vehicles. Employers should also carefully evaluate existing policies and the nature of their workplace to ensure that there are no incentives or un-written policies and practices that encourage the use of hand-held devices while driving.

Finally, employers should consider the growing number of electronic devices and applications that can block the use of cell phones while the vehicle is moving. These devices and applications can be effective and relatively inexpensive. Alternatively, if texting is a necessary part of the employee's job, the employer should consider devising a schedule that allows for routine breaks when the vehicle is stopped to allow for the communications or data entry to be completed.

---

<sup>3</sup> Matt Richtel, "In Study, Texting Lifts Crash Risk by Large Margin," (July 27, 2009), available at <http://www.nytimes.com/2009/07/28/technology/28texting.html>