

New Driving Safety Laws Take Effect in Texas

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Legislators at the federal and state levels are actively addressing potential traffic accidents due, in part, to cell phone use and/or texting while driving. This summer, four United States Senators introduced the ALERT Drivers Act of 2009.¹ Under the legislation, states would be required to ban the sending of text and e-mail messages by drivers or lose 25 percent of their highway funds.² The State of Illinois recently became the 18th state to completely ban texting while driving.³ A recently-passed Utah law imposes a possible 15-year prison sentence for someone who is texting behind the wheel and injures or kills someone.⁴ And the federal safety agency that investigates transportation accidents is prohibiting its employees from texting and talking on cell phones while driving on government business.⁵ These efforts are, in part, a response to a growing body of research which concludes that texting or talking on cell phones while driving greatly increases the risk of getting into an accident. It has even led the Obama Administration to call for a “distracted driving” summit.⁶ Recently, the State of Texas passed legislation that banned the use of a cell phone, including texting, in a school zone as well as other child safety laws. The measures took effect September 1, 2009.

Background

Ask someone with a Blackberry or iPhone how important accessing email or texting at a moment’s notice is to them and the response will likely be “very important.” Americans have relied on cell phones and other devices to send and receive text messages and emails with increasing frequency in recent years – including while driving and commuting to work. According to a recent poll, one in five drivers in the United States admitted to

¹ Avoiding Life-Endangering and Reckless Texting by Drivers Act, S.B. 1536, 111th Cong. (2009); *see also* Off. of Sen. Charles Schumer, Press Release, *Schumer, Menendez, Landrieu and Hagan Unveil First-Ever Legislation to Ban All Drivers From Texting While Operating a Vehicle*, July 29, 2009, available at http://schumer.senate.gov/new_website/record.cfm?id=316529; Sholnn Freeman, *Bill Seeks to Ban Texting By Drivers*, WASH. POST, July 30, 2009, <http://www.washingtonpost.com/wpdyn/content/article/2009/07/29/AR2009072902039.html>; Matt Richtel, *Senators Seek a Ban on Texting and Driving*, N.Y. TIMES, July 29, 2009, <http://www.nytimes.com/2009/07/30/technology/30distracted.html?hp>.

² *Id.* The text of the legislation can be read at <http://www.thomas.gov/cgi-bin/query/z?c111:S.1536>:

³ Oregon and New Hampshire banned the practice in July and Alaska, Arkansas, California, Colorado, Connecticut, Louisiana, Maryland, Minnesota, New Jersey, North Carolina, Tennessee, Utah, Virginia, Washington, and the District of Columbia currently have laws in place.

⁴ Matt Richtel, *Utah Gets Tough With Texting Drivers*, N.Y. TIMES, Aug. 29, 2009, <http://www.nytimes.com/2009/08/29/technology/29distracted.html?scp=1&sq=Utah%20Gets%20Tough&st=cse>.

⁵ Assoc. Press, *NTSB Restricts Employee Cell-Phone Use*, Sept. 8, 2009, available at http://www.nytimes.com/aponline/2009/09/08/us/politics/AP-US-NTSB-Cell-Phones.html?_r=1&scp=1&sq=NTSB%20Restricts%20Employee%20Cell-Phone%20Use%20&st=cse.

⁶ U.S. Dep’t of Transportation, Press Release, *U.S. Transportation Secretary Ray LaHood Announces Agenda for Distracted Driving Summit Leaders to Explore Solutions to Distracted Driving*, Sept. 16, 2009, <http://www.dot.gov/affairs/2009/dot14309.htm>.

sending or reading text messages while driving.⁷ However, a growing body of research concludes that talking on a cell phone and/or texting while driving poses a greater risk of causing traffic accidents.

A Virginia Tech Transportation Institute study found that truck drivers are 23 times more likely to crash, or be involved in a near-crash situation, when texting than when not doing so.⁸ Researchers measured the time drivers took their eyes from the road to send or receive texts. In the moments before a crash or near crash, drivers typically spent nearly five seconds looking at their devices — enough time at typical highway speeds to cover more than the length of a football field.⁹

In an 18-month University of Utah study, a driving simulator was used to study the ability of college students to multitask. It found that drivers took their eyes off the road for about five seconds when texting, resulting in an 8 times greater risk of crashing.¹⁰ By comparison, the Utah researchers showed that drivers using a cell phone to talk face a four times greater risk of crashing, about equal to someone with a 0.08 blood alcohol level, generally the legal limit for intoxication.¹¹

Even with lawmakers taking action and studies revealing the dangers of texting while driving, many drivers have an inflated perception of their skills behind the wheel. Although 90 percent of people surveyed in a recent *New York Times* poll¹² said they believe it should be against the law to send and receive text messages while driving, many exhibit overconfidence in their skills. Arthur Goodwin, a senior research associate at the University of North Carolina's Highway Safety Research Center said, "They think they can do it safely this one time."¹³

Despite the differences between the Virginia Tech and University of Utah studies regarding the risk of crashing, texting while driving results in real-world dangers with often deadly consequences. Last year, a California commuter train operator missed a stop signal while texting with a friend, leading to a collision with a freight train that killed 25 individuals.¹⁴ In Boston, Massachusetts, an operator of a trolley admitted to

⁷ Reuters, *One In Five U.S. Drivers Admits to Texting: Survey*, Sept. 25, 2009, available at <http://www.nytimes.com/reuters/2009/09/25/news/news-us-autos-safety-texting.html>.

⁸ See Richtel, *supra* note 1; see also Sherri Box, *New Data from Virginia Tech Transportation Institute Provides Insight Into Cell Phone Use and Driving Distraction*, VA. TECH. NEWS, July 29, 2009, available at <http://www.vtnews.vt.edu/story.php?relyear=2009&itemno=571>.

⁹ Matt Richtel, *In Study, Texting Lifts Crash Risk by Large Margin*, N.Y. TIMES, July 29, 2009, <http://www.nytimes.com/2009/07/28/technology/28texting.html>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Marjorie Connelly, *Poll Finds Support For Ban on Texting at the Wheel*, N.Y. TIMES, Sept. 27, 2009, <http://www.nytimes.com/2009/09/28/technology/28truckerside.html>; see also Liz Halloran, *Government Eyes Crackdown on Texting and Driving*, NPR, Sept. 30, 2009, <http://www.npr.org/templates/story/story.php?storyId=113325341&ft=1&f=1001>.

¹³ Liz Halloran, *Government Eyes Crackdown on Texting and Driving*, NPR, Sept. 30, 2009, <http://www.npr.org/templates/story/story.php?storyId=113325341&ft=1&f=1001>.

¹⁴ Jesse McKinley and Matthew L. Wald, *California Bans Texting By Operators of Trains*, N.Y. TIMES, Sept. 18, 2008, <http://www.nytimes.com/2008/09/19/us/19crash.html>.

texting seconds before the collision with another trolley which injured 62 people in May.¹⁵

Following the lead of many other states, the Texas Legislature passed a law impacting cell phone and texting use as well as passing other traffic laws addressing child safety.

Texas Legislation

Several Texas traffic and child safety laws took effect September 1, 2009. Most pertinent to this article is House Bill 55 which imposes a fine of up to \$200 if an individual uses a cell phone in a school zone, unless the vehicle is stopped or a hands-free device is used.¹⁶ According to bill analysis conducted by the House Research Organization, supporters of the measure note that:

[a] growing body of research has resoundingly concluded that cell phones distract drivers and increase response times to sudden traffic incidents. Nowhere is this added distraction more dangerous than in school zones, which are characterized by numerous sudden traffic incidents, such as students crossing a street to reach a sidewalk or make their way to a waiting vehicle.¹⁷

Opponents of the legislation stated the bill would single out one of the numerous distractions that often cause traffic accidents, including radios, auto controls, and talking to passengers.¹⁸

Despite the well-intentioned nature of the law, many Texas communities may not be subject to its provisions. Cities wanting to enforce the law are required to post a sign at the beginning of each school zone informing drivers of the law. Many cities simply are not able to afford the cost associated with posting the signs.

House Bill 537 requires all occupants of a vehicle, no matter their age and regardless of where they are physically located inside the vehicle, to wear a seat belt.¹⁹ The measure additionally imposes a fine of up to \$200 if a motorcycle operator carries a passenger under the age of 5 years old unless the child is seated in a sidecar attached to the motorcycle.²⁰

¹⁵ Milton J. Valencia and Noah Bierman, *MBTA: Conductor in Boston Trolley Crash Was Texting His Girlfriend*, BOSTON GLOBE, May 8, 2009, http://www.boston.com/news/local/breaking_news/2009/05/ems_49_taken_to.html.

¹⁶ H.B. 55, 81st Reg. Sess. (Tex. 2009).

¹⁷ Tex. House Research Org., Bill Analysis H.B. 55, May 8, 2009, *available at* <http://www.hro.house.state.tx.us/pdf/ba81r/hb0055.pdf#navpanes=0>.

¹⁸ *Id.*

¹⁹ H.B. 537, 81st Reg. Sess. (Tex. 2009).

²⁰ *Id.*

Senate Bill 61 amends the current law regarding child passenger safety seats.²¹ The statute now requires that any child younger than 8 years of age to be seated in an approved child safety seat unless he or she is at least 4 feet, 9 inches in height. Tickets for the offense can not be issued until June 1, 2010, giving drivers time to purchase seats, if necessary, and police officers time to issue warnings.

Conclusion

There is little doubt that texting while driving increases an individual's risk of being involved in a traffic accident. However, getting tough with texting drivers may be more difficult than at first glance. Law enforcement officials may find a difficult time enforcing the safety measures if savvy drivers simply keep their cell phones out of sight and continue texting. Without a true enforcement mechanism, there likely will continue to be traffic accidents and fatalities as a result.

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²¹ S.B. 61, 81st Reg. Sess. (Tex. 2009).