

Post-Session Update: Texting while Driving

Many Texas cities have enacted ordinances that restrict use of a wireless communication device while driving. During the regular session, the legislature passed House Bill 62 (<http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/HB00062F.pdf#navpanes=0>), which may affect city ordinances related to use of a device while driving. Additionally, cities that have not enacted a local ban on texting while driving will now be able to enforce these state law provisions.

House Bill 62 creates a new state law offense: using a portable wireless communication device for electronic messaging while operating a motor vehicle. Specifically, an individual is prohibited from using a wireless device to read, write, or send an electronic message while driving. "Electronic message" is defined as data that is read from or entered into a wireless communication device for the purpose of communicating with another person.

Transportation Code section 545.4251 provides a number of affirmative defenses to this offense. It is an affirmative defense to prosecution if the wireless communication device was being used:

1. in conjunction with a hands-free device;
2. to navigate using a global positioning system or navigation system;
3. to report illegal activity, summon emergency help, or enter information into a software application that provides information relating to traffic and road conditions to users of the application;
4. to read an electronic message that the person reasonably believed concerned an emergency;
5. that was permanently or temporarily affixed to the vehicle to relay information in the course of the operator's occupational duties between the operator and a dispatcher or a digital network or software application service; or
6. to activate a function that plays music.

The state law prohibition does not apply to operators of authorized emergency or law enforcement vehicles while acting in an official capacity.

A violation of the offense is a misdemeanor punishable by a fine of at least \$25 and not more than \$99. However, at trial, if it is shown that the defendant has been previously convicted of this offense, the fine increases to at least \$100 but not more than \$200. If it is shown at trial that while committing an offense, the defendant caused the death or serious bodily injury of another person, then the offense becomes a class A misdemeanor. The maximum penalty for a class A misdemeanor is a fine not to exceed \$4,000 and confinement in jail for up to a year. (Note: a municipal court does not have jurisdiction over class A misdemeanor cases.)

Beginning September 1, 2017, any city ordinance relating to the use of a portable wireless communication device by a driver to read, write, or send an electronic message is preempted. A city may continue to prohibit the use of a wireless communication device for phone calls, unless the individual is using a hands-free device to do so. If a city requires the use of a hands-free device, Transportation Code section 545.425 (b-2) requires a city to post signs indicating this prohibition at each point at which a state highway, U.S. highway, or interstate highway enters the city. The signs must state:

1. that an operator is prohibited from using a wireless communication device while operating a motor vehicle in the political subdivision, and whether use of a wireless communication device with a hands-free device is allowed in the political subdivision; and
2. that the operator is subject to a fine if the operator uses a wireless communication device while operating a motor vehicle in the political subdivision.

A city is also required to post the above message on any dynamic message sign operated in the city located on a state highway, U.S. highway, or interstate highway in the city.

Transportation Code section 543.004(a) provides that a police officer may only issue a written notice to appear for a violation of section 545.4251. This means that an officer is prohibited from placing an individual under arrest for this offense. An officer is also prohibited from taking possession of or inspecting the device, unless authorized by the Code of Criminal procedure, Penal Code, or other law.

If you have additional questions, please contact Heather Lockhart, TML assistant general counsel at 512-231-7400 or heather@tml.org (<mailto:heather@tml.org>).

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