



NCOIL Distracted Driving Model Law – Proposed Amendment

Offered by: Wayne Weikel, Senior Director

On behalf of the Alliance for Automotive Innovation¹ (Auto Innovators), I am writing to you today in your capacity as a member of the National Conference of Insurance Legislators (NCOIL) Property and Casualty Committee. As you may be aware, NCOIL's Property and Casualty Committee is scheduled to consider a draft model law designed to help reduce distracted driving.

Auto Innovators' members invest heavily in research and development to design and implement state-of-the-art safety systems to protect our customers. Technological advancement, however, is only part of the equation. Consumer behavior also plays a critical role in vehicle and passenger safety. Wearing seat belts, following the rules of the road, and not driving under the influence of drugs or alcohol are all vital to road safety. Also important to this calculation is the level of attention operators pay to the driving task at hand. To assist a driver to keep their eyes on the road and hands on the wheel, the industry has developed technologies in today's cars designed around a set of engineering principles aimed at mitigating driver distraction. In fact, these principles, which have been voluntarily followed by vehicle manufacturers for over a decade, served as the basis for the National Highway Traffic Safety Administration's (NHTSA) distracted driving guidelines released in 2014.

In addition to working with NHTSA to bring safer vehicles to the roadways, the Auto Innovators and its members have also worked with state legislators across the country to enact roadway safety legislation. It is in this capacity that we are writing to you to ask for your support of the proposed model law. To improve the draft model law, however, we would ask for your favorable consideration of the minor amendment language offered below.

As originally drafted, the model law appears to target handheld electronic devices. Despite this intention, it could be read as also including in-vehicle technology systems. In-vehicle systems have been designed with specific engineering principles to help drivers keep their hands on the wheel and eyes on the road. The below changes would properly tailor the model law to only impact portable, hand-held electronic devices and we ask for your support of this amended language.

Thank you in advance for your consideration of our views.

¹ Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. The newly established organization, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers, is directly involved in regulatory and policy matters impacting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, as well as technology and other automotive-related companies. Visit our website <http://www.autosinnovate.org>.

Auto Innovator Suggested Edits Offered in **RED CAPITALS**

Distracted Driving Model Act

***Sponsors as of July 20, 2020: Sen. Bob Hackett (OH)**

***Discussion Draft as of July 20, 2020**

Section 1 – Definitions

'**Stand-alone electronic device**' means a **PORTABLE** device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user.

'**Utility services**' means and includes electric, natural gas, water, waste-water, cable, telephone, or telecommunications services or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights of way, or associated infrastructure.

'**Wireless telecommunications device**' means **ONE OF THE FOLLOWING PORTABLE DEVICES**:

- (1) a cellular telephone;
- (2) a portable telephone;
- (3) a text-messaging device;
- (4) a personal digital assistant;
- (5) a stand-alone computer, including but not limited to a tablet, laptop or notebook computer;
- (6) a global positioning system receiver;
- (7) a device capable of displaying a video, movie, broadcast television image, or visual image; or
- (8) Any substantially similar portable wireless device that is used to initiate or receive communication, information or data.

Such term shall not include a radio, citizens band radio, citizens band radio hybrid, commercial two-way radio communication device or its functional equivalent, subscription-based emergency communication device, prescribed medical device, amateur or ham radio device, or in-vehicle security, navigation, **COMMUNICATIONS**, or remote diagnostics system.

"Voice-operated or hands-free feature or function" means a feature or function that allows a person to use an electronic wireless communications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

Section 2 – Operation

(A) The driver of a school bus shall not use or operate a wireless telecommunications device, as such as term is defined in Section 2 of this Act, or two-way radio while loading or unloading passengers.

(B) The driver of a school bus shall not use or operate a wireless telecommunications device, as such term is defined in Section 2 of this Act, while the bus is in motion, unless it is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

(C) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions which shall distract such driver from the safe operation of such vehicle.

(D) While operating a motor vehicle on any street, highway, or property open to the public for vehicular traffic in this state, no individual shall:

(1) Physically hold or support, with any part of his or her body a:

- (a) Wireless telecommunications device; or
- (b) Stand-alone electronic device;

(2) Write, send, or read any text-based communication, including but not limited to a text message, instant message, e-mail, or social media interaction on a wireless telecommunications device or stand-alone electronic device; provided, however, that such prohibition shall not apply to a voice-operated or hands-free communication feature which is automatically converted by such device to be sent as a message in a written form; or

(3) Make any communication, including a phone call, voice message, or one-way voice communication; provided, however, that such prohibition shall not apply to a voice-operated or hands-free communication feature or function

(4) Engage in any form of electronic data retrieval or electronic data communication **ON A WIRELESS TELECOMMUNICATIONS DEVICE OR STAND-ALONE ELECTRONIC DEVICE;**

(5) Manually enter letters, numbers, or symbols into any website, search engine, or application **ON A WIRELESS TELECOMMUNICATIONS DEVICE OR STAND-ALONE ELECTRONIC DEVICE;**

(6) Watch a video or movie on a wireless telecommunications device or stand-alone electronic device other than watching data related to the navigation of such vehicle; or

(7) Record, post, send, or broadcast video, including a video conference on a wireless telecommunications device or stand-alone electronic device; provided that such prohibition shall not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle.

(E) While operating a commercial motor vehicle on any highway of this state, no individual shall:

(1) Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to no longer be:

(a) In a seated driving position; or

(b) Properly restrained by a safety belt.

(F) Each violation of this Code section shall constitute a separate offense.

Section 3 – Penalties

(A) Except as provide for in paragraph (B) of this section, any person convicted of violating this Act shall be guilty of an unclassified misdemeanor which shall be punished as follows:

(1) For a first conviction with no conviction of and no plea of no contest accepted to a charge of violating this Act within the previous 24 month period of time, as measured from the dates any previous convictions were obtained or pleas of no contest were accepted to the date the current conviction is obtained or plea of no contest is accepted, a fine of not more than \$150.00 and charged two (2) points.

(2) For a second conviction within a 24-month period of time, as measured from the dates any previous convictions were obtained or pleas of no contest were accepted to the date the current conviction is obtained or plea of no contest is accepted, a fine of not more than \$250.00 and charged three (3) points.

(3) For a third or subsequent conviction within a 24-month period of time, as measured from the dates any previous convictions were obtained or pleas of no contest were accepted to the date the current conviction is obtained or plea of no contest is accepted, a fine of not more than \$500.00, charged four (4) points, and at the court's discretion, suspension of the offender's driver's license for a period of 90 days.

(B) Any person appearing before a court for a first charge of violating Section 2 (D)(1) of this Act who produces in court a device or proof of purchase of such device that would allow such person to comply with such paragraph in the future shall not be guilty of such offense. The court shall require the person to affirm that they have not previously utilized the privilege under this paragraph.

(C) Any person convicted of a violation of any law or ordinance pertaining to speed when the offender also was distracted, as defined in this Act, shall be charged points as follows:

(a) when the speed exceeds the lawful limit by thirty miles per hour or more, six (6) points

(b) When the speed exceeds the lawful speed limit of fifty-five miles per hour or more by more than ten miles per hour, four (4) points

(c) When the speed exceeds the lawful speed limit of less than fifty-five miles per hour by more than five miles per hour, four (4) points

(D) Any person who causes physical harm to property as the proximate result of committing a violation of this Act is guilty of a misdemeanor of the first degree. In addition to any other authorized penalty, the court shall impose upon the offender a fine not less than five hundred dollars and not more than one thousand dollars.

(E) Any person who causes serious physical harm to another person as the proximate result of committing a violation of this Act is guilty of aggravated vehicular assault and shall be punished according to this STATE'S CRIMINAL CODE.

(F) Any person who causes the death of another as the proximate result of committing a violation of this Act is guilty of aggravated vehicular homicide and shall be punished according to this STATE'S CRIMINAL CODE.

DRAFTING NOTE: States should consider aligning property damage, injury, and/or death with equivalent driver intoxication offenses and penalties.

(G) Section 2 (D) and (E) of this Act shall not apply when the prohibited conduct occurred:

(1) While reporting to state, county or local authorities a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or road condition that causes an immediate and serious traffic or safety hazard;

(2) By an employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency.

(3) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(4) By a law enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) While in a motor vehicle which is lawfully parked.