



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Relating to Hand-Held Devices

March 6, 2017

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.
Please consult the New Jersey statutes in order to determine the law of the State.

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Introduction

The Office of the Attorney General, Division of Highway Traffic Safety, describes distracted driving as a dangerous epidemic on New Jersey's roadways. According to statistics available at the Division's website, driver inattention has been a major contributing factor in nearly 800,000 motor vehicle crashes in the state from 2010 to 2014 – in 2014 alone, 3,179 were killed nationwide in distracted driving crashes.¹

N.J.S. 39:4-97.3 prohibits the use of a cell phone “by an operator of a moving motor vehicle on a public road or highway” unless the device is used hands-free.² However, the statute specifically allows “the use of either hand to activate, deactivate, or initiate a function of the telephone.” A member of the public apprised the Commission of a concern that the statute's language negatively impacts the ability of traffic officers to enforce the law.

After conducting preliminary research and outreach to interested parties, the Commission became aware of work in this area by Senator Richard J. Codey and Assemblyman John S. Wisniewski, to address the issue of cell phone use while temporarily stopped in traffic. Accordingly, the Commission now finalizes its work in this area, and offers its support to the Legislature regarding the provisions of Senate Bill No. 1773 and the identical Assembly Bill No. 4005, as they pertain to the issue of cell phone use.

Background

New Jersey law permits cautious, hands-free cell phone use, but allows hand-held usage in emergency situations, or to report a traffic accident. N.J.S. 39:4-97.3, entitled “Use of hands-free and hand-held wireless communication devices while driving; when permitted; penalty,” provides, in pertinent part:

- a. The use of a wireless telephone or electronic communication device by an operator of a **moving motor vehicle** on a public road or highway shall be unlawful except when the telephone is a hands-free wireless telephone or the electronic communication device is used hands-free, provided that its placement does not interfere with the operation of federally required safety equipment and the operator exercises a high degree of caution in the operation of the motor vehicle. [Emphasis added.]

* * *

“Hands-free wireless telephone” means a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a conversation

¹ State of New Jersey, Office of the Attorney General, Division of Highway Traffic Safety, http://www.nj.gov/oag/hts/phone_down_overview.html (last visited March 2, 2017).

² N.J. STAT. ANN. § 39:4-97.3 (West 2017).

without the use of either hand; provided, however, this definition **shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone.** [Emphasis added.]

* * *

“Use” of a wireless telephone or electronic communication device shall include, but not be limited to, talking or listening to another person on the telephone, **text messaging**, or sending an electronic message via the wireless telephone or electronic communication device. [Emphasis added.]

* * *

Preliminary outreach to members of the traffic enforcement community and the municipal court bar revealed two main areas of concern regarding New Jersey’s anti-texting statute.

First, the provision specifically prohibiting use of a cellphone by an operator of a *moving* vehicle may provide a loophole when it is interpreted to permit the use of a hand-held device even while the driver is stopped temporarily in traffic, which outcome would seem to be inconsistent with the Legislature’s intent.

The Commission noted agreement among early commenters that N.J.S. 39:4-97.3 should be changed to prohibit using a cell phone while stopped at a traffic light. Purportedly, distracted drivers who cause delays and interrupt the flow of traffic by failing to immediately move forward when the signal turns green not only interrupt the flow of traffic and inconvenience other drivers, but may also spark aggressive driving and cause more traffic accidents.

Also raised as a concern is the language in the same section allowing “the use of either hand to activate, deactivate, or initiate a function of the telephone.” Commenters asserted that *State v. Malone*, an unpublished New Jersey Appellate Division case, is frequently cited by ticketed drivers for its holding that the pushing of buttons on a cellphone is not a violation of the statute when activating, deactivating, or initiating a function of the phone.³ The language of the statute is not as clear as it might be in this area because it neither expressly permits, nor prohibits, dialing and allows drivers to handle the devices even though configured for hands-free operation, and have been characterized as even more problematic for law enforcement than the “moving motor vehicle” issue. Some traffic officers contend that this part of the statute makes it impossible to prove texting vs. activation.

Other States’ Statutes

Six years ago, Forbes.com named New Jersey as one of the toughest states on distracted drivers, along with California, Connecticut, New York, Oregon, Utah, and Washington, based on their

³ *State v. Malone*, 2011 WL 2582730, *3 (App. Div. 2011).

outright bans on using any handheld cellphone while driving.⁴ The recent concerns expressed to the Commission are in spite of the tough statutory language. Meanwhile, a new California law cracking down on cellphone use by motorists is intended to make it easier for officers in that state to stop and cite drivers for illegal phone use.⁵ The law, which became effective January 1, 2017, requires a cellphone to be mounted to the vehicle and limits the driver’s interaction with the device to a single tap of a finger or a single swipe, only.⁶ While it is too soon at this time to provide relevant statistics regarding its effectiveness, the language of California’s new law directly addresses both of the commenters’ concerns described above.

Other states’ statutory language presents interesting possibilities and would seem to address both of these concerns. The matrix below depicts the key provisions of each state’s statute, where applicable, as they relate to texting while driving on public streets and highways. Of note, texting while driving is not prohibited in every state. Neither Arizona nor Montana have outlawed the activity, and texting is a violation in Texas only while driving through a school crossing zone.

While the language in New Jersey’s statute is said to present a law enforcement issue in cases where an operator handles a communication device while temporarily stopped in traffic, several states’ no-texting laws are illuminating. For instance, drivers in **Colorado** may use their devices while the vehicle is at rest in a shoulder lane or lawfully parked. **Georgia** also specifies a lawfully parked exception, while **North Carolina** requires only that the vehicle be lawfully *stopped*. **Illinois** permits texting with a hand-held device when the vehicle is stopped due to “normal traffic being obstructed” as long as the transmission is in neutral or park. A number of states stipulate that drivers may not text while the vehicle is in motion or a part of traffic, to include being temporarily halted by traffic or during stops at signs or signals. **Maine** takes the precaution of defining the word “operate” to mean driving a motor vehicle on a public motor way with the motor running, including while temporarily stationary because of traffic, a traffic light, or a stop sign.

On the subject of pushing the buttons of a mobile communication device to complete a non-texting function, such as making a phone call, there is a certain amount of diversity. Some jurisdictions have made no discernable allowance for dialing a phone while driving, and most permit hands-free phone use, but many others – **Alabama**, **Kansas**, and **Kentucky**, to name a few – permit as an exception the entering of a telephone number for the purpose of making a call, even while driving. At the other, more restrictive, end of the spectrum, **Hawaii** prohibits all drivers from operating a motor vehicle while using a hand-held mobile device – and defines “using” so broadly as to include even *holding* a mobile electronic device.

⁴ Worst States for Distracted Drivers, Forbes.com, <https://www.forbes.com/2010/03/17/texting-driving-iphone-lifestyle-vehicles-states-bans.html> (last visited March 3, 2017).

⁵ California’s strict new law: Drivers, put down that cellphone, Sacramento Bee, <http://www.sacbee.com/news/local/transportation/article123126354.html>, (last visited March 3, 2017).

⁶ West’s Ann.Cal. Vehicle Code § 23123.5.

State	Statute(s)	Pertinent Language	Exceptions (e.g., “to activate, deactivate, or initiate a function”)
Alabama	Ala.Code 1975 § 32-5A-350	“May not operate a motor vehicle on a public road, street, or highway ... while using a wireless telecommunication device to write, send, or read a text-based communication.”	<ul style="list-style-type: none"> • Reading, selecting, or entering a telephone number or name for the purpose of making a telephone call. • Emergencies. • While parked on shoulder. • Using GPS (pre-programmed coordinates only).
Alaska	AS § 28.35.161	“Crime of driving while texting, while communicating on a computer, or while a screen device is operating if the person is driving a motor vehicle”	<ul style="list-style-type: none"> • GPS.
Arizona	N/A		
Arkansas	A.C.A. § 27-51-1504	“Driver of a motor vehicle shall not use a handheld wireless telephone for wireless interactive communication while operating a motor vehicle.”	<ul style="list-style-type: none"> • Emergencies. • Performing official law officer, firefighter, ambulance driver, or EMT duties.
California	West's Ann.Cal.Vehicle Code § 23123.5	<p>“Shall not drive a motor vehicle while holding and operating a handheld wireless telephone.”</p> <p>“Driver’s hand is used to activate or deactivate ... with the motion of a single swipe or tap of the driver’s finger.”</p>	<ul style="list-style-type: none"> • Manufacturer-installed systems embedded in the vehicle. • Emergency services professional.

Colorado	C.R.S.A. § 42-4-239	“Shall not use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission while operating a motor vehicle”	<ul style="list-style-type: none"> • Motor vehicle is at rest in a shoulder lane or lawfully parked. • Emergency.
Connecticut	C.G.S.A. § 14-296aa	“Types, sends or reads a text message with a hand-held mobile telephone or mobile electronic device while operating a motor vehicle”	<ul style="list-style-type: none"> • Being parked on the side or shoulder of any highway where such vehicle is safely able to remain stationary. • Emergency.
Delaware	21 Del.C. § 4176C	“Drive a motor vehicle on any highway while using an electronic communication device while such motor vehicle is in motion.”	<ul style="list-style-type: none"> • Hands-free. • Emergency.
District of Columbia	DC ST § 50-1731.04	“No person shall use a mobile telephone or other electronic device while operating a moving motor vehicle”	<ul style="list-style-type: none"> • Hands-free. • Emergency. • Initiating/terminating calls; turning phone on/off.
Florida	West's F.S.A. § 316.305	“May not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device ... for the purpose of nonvoice interpersonal communication”	<ul style="list-style-type: none"> • Emergency. • Navigation.
Georgia	Ga. Code Ann., § 40-6-241.2	“No person . . . shall operate a motor vehicle . . . while using a wireless telecommunications device to write, send, or read any text based communication”	<ul style="list-style-type: none"> • CB radios. • Navigation. • Reporting traffic accident or crime. • Law enforcement. • While lawfully parked.
Hawaii	HRS § 291C-137	“No person shall operate a motor vehicle while using a [hand-held]	<ul style="list-style-type: none"> • 911 emergency communications. • Vehicle at a complete

		<p>mobile electronic device.”</p> <p>“Operate’ includes operation while temporarily stationary b/c of traffic, traffic light, or stop sign.”</p> <p>“Use” or “using” means holding a mobile electronic device while operating a motor vehicle.</p>	<p>stop, engine turned off, safe location by the side of the road out of way of traffic.</p>
Idaho	I.C. § 49-1401A	<p>“Texting, as that term is defined in subsection (1) of this section, while driving a moving motor vehicle shall constitute an infraction”</p>	<ul style="list-style-type: none"> • Activate, deactivate or initiate a feature or function.
Illinois	625 ILCS 5/12-610.2	<p>“A person may not operate a motor vehicle on a roadway while using an electronic communication device.”</p> <p>““Electronic communication device” means an electronic device, including but not limited to a hand-held [devices]”</p>	<ul style="list-style-type: none"> • GPS or navigation system. • Law enforcement. • Reporting emergency. • A driver using an electronic communication device when the vehicle is stopped due to normal traffic being obstructed and the driver has the motor vehicle transmission in neutral or park.
Indiana	IC 9-21-8-59	<p>“may not use a telecommunications device to . . . type . . . transmit . . . read a text message . . . while operating a moving motor vehicle”</p>	<ul style="list-style-type: none"> • Hands-free technology. • Report a bona fide emergency.

Iowa	I.C.A. § 321.276	“shall not use a hand-held electronic communication device to write, send, or read a text message while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway.”	<ul style="list-style-type: none"> • GPS or navigation. • Activates, deactivates, or initiates a function of a hand-held mobile telephone. • Health care professional in an emergency.
Kansas	K.S.A. 8-15,111	“no person shall operate a motor vehicle on a public road or highway while using a wireless communications device to write, send or read a written communication.”	<ul style="list-style-type: none"> • Motor vehicle stopped off the regular traveled portion of roadway. • Enters telephone number to make call. • Navigation.
Kentucky	KRS § 189.292	“while operating a motor vehicle that is in motion on the traveled portion of a roadway, write, send, or read text-based communication using a personal communication device to manually communicate with any person using text-based communication”	<ul style="list-style-type: none"> • GPS, navigation. • Entering phone number to make a call. • Report illegal activity.
Louisiana	LSA-R.S. 32:300.5	“no person shall operate any motor vehicle upon any public road or highway of this state while using a wireless telecommunications device to write, send, or read a text-based communication.”	<ul style="list-style-type: none"> • Entering phone number to make a call. • Report illegal activity. • To prevent injury. • GPS or navigation.

Maine	29-A M.R.S.A. § 2119	<p>“A person may not operate a motor vehicle while engaging in text messaging.”</p> <p>“Operate” means driving a motor vehicle on a public way with the motor running, including while temporarily stationary because of traffic, a traffic light or a stop sign or otherwise stationary”</p>	<ul style="list-style-type: none"> • Motor vehicle pulled over to side of, or off, a public way, where it can safely remain stationary.
Maryland	<p>MD Code, Transportation, § 21-1124.2</p> <p>MD Code, Transportation, § 21-1124.1</p>	<p>“motor vehicle that is in motion may not use the driver's hands to use a handheld telephone other than to initiate or terminate a wireless telephone call or to turn on or turn off the handheld telephone.”</p> <p>“may not use a text messaging device to write, send, or read a text message or an electronic message while operating a motor vehicle in the travel portion of the roadway.”</p>	<ul style="list-style-type: none"> • GPS. • Text messaging device to contact a 911 system.
Massachusetts	M.G.L.A. 90 § 13B	<p>“No operator of a motor vehicle shall use a mobile telephone, or any handheld device capable of accessing the internet, to manually compose, send or read an electronic message while operating a motor vehicle.”</p>	<ul style="list-style-type: none"> • Not “operating” if vehicle is stationary and not located in a part of the public way intended for travel.
Michigan	M.C.L.A. 257.602b	<p>“shall not read, manually type, or send a text message on a . . . device . . . while operating a motor vehicle that is moving on a highway or street”</p>	<ul style="list-style-type: none"> • Report traffic accidents. • Official law enforcement duties.

Minnesota	M.S.A. § 169.475	“No person may operate a motor vehicle while using a wireless communications device to compose, read, or send an electronic message, when the vehicle is in motion or a part of traffic.”	<ul style="list-style-type: none"> • Hands-free mode. • Making a cellular call. • Life or safety in danger.
Mississippi	Miss. Code Ann. § 63-33-1	“operator of a moving motor vehicle is prohibited from writing, sending, or reading a text message and from accessing, reading or posting to a social networking site using a hand-held mobile telephone while driving said motor vehicle.”	<ul style="list-style-type: none"> • Hands-free setup.
Missouri	V.A.M.S. 304.820	“21 years old or younger . . . operating a moving motor vehicle upon the highways . . . by means of a hand-held electronic wireless communications device, send, read, or write a text message.”	<ul style="list-style-type: none"> • To prevent injury. • Report illegal activity. • Permanently embedded into design of vehicle.
Montana	N/A	[No state statute prohibiting texting, but some municipalities have implemented their own bans on distracted driving.]	
Nebraska	Neb.Rev.St. § 60-6,179.01	“no person shall use a handheld wireless communication device to read a written communication, manually type a written communication, or send a written communication while operating a motor vehicle which is in motion.”	<ul style="list-style-type: none"> • Official law enforcement duties. • Emergency situations. • Handsfree operation.

Nevada	N.R.S. 484B.165	<p>“shall not, while operating a motor vehicle on a highway in this State . . . Manually type or enter text into a cellular telephone or other handheld wireless communications device”</p> <p>[specifically prohibits Internet searches]</p>	<ul style="list-style-type: none"> • Emergency personnel. • Reporting medical emergency.
New Hampshire	N.H. Rev. Stat. § 265:79-c	<p>“No person, while driving a moving motor vehicle upon a way or temporarily halted in traffic for a traffic control device or other momentary delay, shall use any hand-held mobile electronic device capable of providing voice or data communication”</p>	<ul style="list-style-type: none"> • Reporting emergencies. • Perform ignition interlock device functions. • Handsfree GPS or navigation.
New Jersey	N.J.S.A. 39:4- 97.3	<p>“by an operator of a moving motor vehicle on a public road or highway shall be unlawful”</p>	<ul style="list-style-type: none"> • Reporting fire, accident, hazard, reckless driving. • Telephone records may be used to prove lawful use.
New Mexico	N. M. S. A. 1978, § 66-7- 374	<p>“shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle”</p>	<ul style="list-style-type: none"> • Summon medical or other emergency help. • Amateur radio. • GPS or navigation. • Activate, deactivate, or initiate feature or function.

New York	McKinney's Vehicle and Traffic Law § 1225-d	<p>“no person shall operate a motor vehicle while using any portable electronic device while such vehicle is in motion”</p> <p>“who holds a portable device in a conspicuous manner while operating a motor vehicle . . . including while temporarily stationary because of traffic, a traffic control device, or other momentary delays . . . is presumed to be using such device</p>	<ul style="list-style-type: none"> • vehicle stopped at the side of road.
North Carolina	N.C.G.S.A. § 20-137.4A	<p>“to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to . . . Manually enter multiple letters or text in the device as a means of communicating with another person; or . . . Read any electronic mail or text message”</p>	<ul style="list-style-type: none"> • Lawfully parked or stopped. • GPS. • Voice operated technology.
North Dakota	NDCC, 39-08-23	<p>“operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.”</p> <p>“Traffic” means operation of a motor vehicle while in motion or for the purposes of travel on any street or highway and includes a temporary stop or halt of motion, such as at an official traffic-control signal or sign. The term does not include a motor vehicle that is lawfully parked.”</p>	<ul style="list-style-type: none"> • Reading, selecting, or entering a telephone number. • GPS inputs.

Ohio	R.C. § 4511.204	“No person shall drive a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.”	<ul style="list-style-type: none"> • Emergency. • Stationary position outside a lane of travel. • Reading, selecting, or entering a name or telephone number for a call. • Navigation.
Oklahoma	47 Okl.St. Ann. § 11-901c	“unlawful for any person to operate a commercial motor vehicle or for a public transit driver to operate a motor vehicle on any street or highway within this state while . . . Using a cellular telephone or electronic communication device to write, send, or read a text-based communication”	<ul style="list-style-type: none"> • Voice commands. • GPS or navigation.
Oregon	O.R.S. § 811.507	“operating a motor vehicle on a highway, uses a mobile communication device.”	<ul style="list-style-type: none"> • Summoning medical or other emergency help. • Hands-free accessories.
Pennsylvania	75 Pa.C.S.A. § 3316	“No driver shall operate a motor vehicle on a highway or trafficway in this Commonwealth while using an interactive wireless communications device to send, read or write a text-based communication while the vehicle is in motion.”	<ul style="list-style-type: none"> • Read, select, or enter a telephone number or name. • Activating or deactivating a voice communication or telephone call.

Rhode Island	Gen.Laws 1956, § 31-22- 30	“No person shall use a wireless handset or personal wireless communication device to compose, read, or send text messages while driving a motor vehicle on any public street or public highway [including while temporarily stationary because of traffic, a traffic light or stop sign]”	<ul style="list-style-type: none"> • While parked or removed from flow of traffic. • To report an emergency.
South Carolina	Code 1976 § 56-5-3890	“unlawful for a person to use a wireless electronic communication device to compose, send, or read a text-based communication while operating a motor vehicle on the public streets and highways of this State.”	<ul style="list-style-type: none"> • Lawfully parked or stopped. • Hands-free device. • Emergency. • GPS or navigation.
South Dakota	SDCL § 32-26- 47	“No person may operate a motor vehicle on a highway while using a handheld electronic wireless communication device to write, send, or read a text-based communication”	<ul style="list-style-type: none"> • While lawfully parked. • Emergency. • Write, read, select, or enter a telephone number or name. • Hands-free technology.
Tennessee	T. C. A. § 55-8- 199	“No person while driving a motor vehicle on any public road or highway shall use a hand-held mobile telephone or a hand-held personal digital assistant to transmit or read a written message”	<ul style="list-style-type: none"> • Unless not in motion at the time. • Law enforcement. • Emergency.
Texas	V.T.C.A., Transportation Code § 545.425	“operator may not use a wireless communication device while operating a motor vehicle within a school crossing zone”	<ul style="list-style-type: none"> • While stopped. • Hands-free device.

Utah	U.C.A. 1953 § 41-6a-1716	“may not use a handheld wireless communication device while operating a moving motor vehicle on a highway in this state to manually . . . write, send, or read a written communication, including . . . text message . . . instant message . . . electronic mail . . . dial a phone number . . . access the Internet . . . view or record video”	<ul style="list-style-type: none"> • Voice communication. • GPS or navigation. • Emergency. • Reporting safety hazard or criminal activity.
Vermont	23 V.S.A. § 1095b	“A person shall not use a portable electronic device while operating a moving motor vehicle . . . including while the vehicle is stationary”	<ul style="list-style-type: none"> • Hands-free use. • Activation or deactivation of hands-free use. • Ignition interlock. • GPA or navigation.
Virginia	VA Code Ann. § 46.2-1078.1	“unlawful . . . to operate a moving motor vehicle on the highways . . . while using any handheld personal communications device to . . . Manually enter multiple letters or text in the device . . . or Read any email or text message”	<ul style="list-style-type: none"> • Official duties. • Lawfully parked or stopped. • Name or number stored within device.
Washington	West's RCWA 46.61.667	“a person operating a moving motor vehicle while holding a wireless communications device to his or her ear is guilty of a traffic infraction”	<ul style="list-style-type: none"> • Hands-free operation. • Emergency. • Report illegal activity. • Prevent injury to person or property.

West Virginia	W. Va. Code, § 17C-14-15	“a person may not drive or operate a motor vehicle on a public street or highway while . . . Texting; or . . . Using a cell phone or other electronic communications device . . . including while temporarily stationary because of traffic, a traffic control device, or other momentary delays”	<ul style="list-style-type: none"> • Hands-free equipment. • Driver moves vehicle to the side of, or off, a highway.
Wisconsin	W.S.A. 346.89	“No person may drive . . . any motor vehicle while composing or sending an electronic text message or an electronic mail message.”	<ul style="list-style-type: none"> • Emergency vehicle operator. • Voice-operated or hands-free device. • Activate or deactivate a feature or function.
Wyoming	W.S.1977 § 31-5-237	“No person shall operate a motor vehicle on a public street or highway while using a handheld electronic wireless communication device to write, send or read a text-based communication”	<ul style="list-style-type: none"> • While lawfully parked. • Emergency. • Select or enter a telephone number or name to make a call. • Hands-free technology.

National Highway Traffic Safety Administration (NHTSA)

NHTSA, the federal agency charged with writing and enforcing federal motor vehicle safety standards, in its Sample Texting While Driving Law, refers to the unlawful use of hand-held devices “during operation of a motor vehicle,” but offers the option to cover only motor vehicles “in motion,” as New Jersey has done. Elsewhere on the agency’s website can be found references to such prohibited activities “while driving” and while “behind-the-wheel.”

The Sample Texting While Driving Law, in pertinent part, is as follows:

§ 1 Short title

This act may be cited as the [State] Ban on Texting While Driving Law

§ 2 Purpose

The purpose of this subchapter is to:

- (1) Improve roadway safety for all vehicle operators, passengers, bicyclists, pedestrians and other road users;
- (2) Prevent crashes related to the act of text messaging while driving a motor vehicle;
- (3) Reduce injuries, death, property damage, health care costs, health insurance and automobile insurance rates related to motor vehicle crashes; and
- (4) Authorize law enforcement officers to stop vehicles and issue citations to persons texting while driving as a standard offense.

§ 3 Application

Except as provided in Section 4, this subchapter applies to all drivers during operation of a motor vehicle on the travel portion of public streets, roads and highways [Option: States may elect to cover only motor vehicles in motion]. This subchapter amends [insert state code] to make it unlawful to manually type or enter multiple letters, numbers, symbols or other text in a wireless communication device, or send or read data in the device, for the purpose of non-voice interpersonal communication, including texting, emailing and instant messaging.

* * *

Regarding use of “operating,” which is used in section 3 of NHTSA’s Sample Texting While Driving Law, above, the Commission takes notice that “operating,” while not defined in the New Jersey statutes, is a term of art in driving while intoxicated (DWI) cases and the courts have determined that it may be proved by direct or circumstantial evidence.⁷ Indeed, DWI cases have resulted in convictions when the subject was asleep in the driver’s seat while parked on the side of the road, but with the key in the vehicle’s ignition.⁸

Pending Legislation

Under the provisions of Senate Bill No. 1773 and the identical Assembly Bill No. 4005, it is a violation for a motorist to talk or text on a cellphone even while temporarily stopped because of traffic, a traffic light, a stop sign, or for other reasons. But it would not be a violation to talk or text when the vehicle has been pulled over to the side of or off the road where the vehicle can safely remain stationary.

Although this pending legislation removes the word “moving” and would seem to effectively address the associated issue of cellphone use while in the flow of traffic but stopped at a light, it does not disturb the language allowing drivers to activate, deactivate, or initiate a function of the device.

Conclusion

⁷ *State v. George*, 257 N.J. Super. 493, 497 (App. Div. 1992).

⁸ See, for example, *State v. Valedon*, 2012 WL 411947, at *2 (App. Div. 2012).

Although the release of this Final Report marks the completion of the Commission's work on this project, consistent with the practice of the NJLRC, the Commission offers its support to the Legislature regarding the provisions of Senate Bill No. 1773 and the identical Assembly Bill No. 4005, as they pertain to the issue of cell phone use (the relevant portions of these bills are provided in the Appendix, below).

Appendix

The relevant portions of Senate Bill No. 1773 and identical Assembly Bill No. 4005 (with amendments shown with underlining and strikethrough), which makes it a violation for motorists to talk or text message with a hand-held device while temporarily stopped under certain circumstances, are as follows:

An Act concerning distracted driving and the use of wireless telephones and electronic communication devices in motor vehicles and amending R.S.39:3-10 and P.L.2003, c.310.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

* * *

2. Section 1 of P.L.2003, c.310 (C.39:4-97.3) is amended to read as follows:

1. a. The use of a wireless telephone or electronic communication device by an operator of a ~~moving~~ motor vehicle on a public road or highway, including while the motor vehicle is temporarily stationary because of traffic, a traffic light or stop sign, or otherwise, shall be unlawful except when the telephone is a hands-free wireless telephone or the electronic communication device is used hands-free, provided that its placement does not interfere with the operation of federally required safety equipment and the operator exercises a high degree of caution in the operation of the motor vehicle. The use of a wireless telephone or electronic communication device by an operator of a motor vehicle on a public road or highway shall not be unlawful when the vehicle has been pulled over to the side of, or off, an active roadway and has stopped in a location where it can remain safely stationary. For the purposes of this section, an "electronic communication device" shall not include an amateur radio.

* * *

STATEMENT

This bill requires the driver's license examination to include questions on distracted driving and makes it a violation for motorists to talk or text message with a hand-held wireless telephone or electronic communication device while temporarily stopped under certain circumstances.

Specifically, this bill requires the Motor Vehicle Commission to expand the driver's license examination to include questions regarding distracted driving.

In addition, under the provisions of this bill, it is a violation for a motorist to talk or text message on a hand-held wireless telephone or electronic communication device

while temporarily stopped because of traffic, a traffic light, a stop sign, or otherwise. However, the bill provides that it is not a violation for a motorist to talk or text on a hand-held wireless telephone or electronic communication device when the vehicle has been pulled over to the side of or off of the road and has stopped in a location where the vehicle can safely remain stationary.

It is the sponsor's intent that the provisions of this bill make New Jersey eligible for the federal distracted driving grant under the Moving Ahead for Progress in the 21st Century Act (MAP-21).