

# Attorney Scott Callahan: Texting and Driving is Now Illegal in Texas – Learn the Basics

By Scott Callahan

## As of September 1, 2017, it is illegal to text and drive in Texas

This may come as a surprise, but Texas is the 47th state to ban texting and driving. Texas has tried to pass similar laws at least 4 times since the 2011 legislative session. It was not until this year's session that HB 62 was signed into law by Governor Abbott.



These days, you can readily see people on their phones as they drive. It has become the dangerous norm – texting, emailing, reading, scrolling – all while behind the steering wheel.

You've likely seen it. The light turns green and the car in front of you just sits there. Or, the car next to you suddenly starts drifting into your lane. Or, maybe the glow from a driver's phone lights up his silhouette as he drives through the intersection at night.

Maybe you've done it too. After all, with all of the time spent on the road, it may seem like innocent multi-tasking or just a harmless indulgence glancing down at your phone.

## Statistics

In 2015 alone, 3,477 people in the U.S. were killed, and 391,000 were injured in motor vehicle crashes involving distracted drivers, according to the National Highway Traffic Safety Administration. That equates to more than 9 deaths daily and more than 1,000 injuries daily.

Teens were the largest age group reported as distracted at the time of fatal crashes. Drivers under 25 are three times more likely as older drivers to text while driving, according to NHTSA.

Let's put this into perspective. Answering a text takes your attention away for about five seconds. Traveling at 55 mph, that's enough time to travel the length of a football field with your eyes closed.

## More Dangerous than Drunk Driving

Distracted driving is more dangerous than drunk driving, according to leading researchers at the University of Utah as well as other nationwide studies.



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While there is a well-deserved social stigma against drunk driving, texting and driving is widely tolerated. This despite texting and driving being 6 times more likely to cause an accident than driving drunk, according to the National Safety Council.

For example, in Massachusetts, the fine for drunk driving is 50 times more than the fine for texting and driving. In contrast, Alaska's fine for texting and driving is \$10,000 while their fine for driving while intoxicated is only \$1,500.

Luckily, the drunk driving fatality rate has been on a decades-long decline. However, the danger of *distracted* driving is worsening with the prevalence of smart phone use. Between 2005 and 2012, the number of drunk driving fatalities per person decreased 28%. Meanwhile, the number of fatalities caused by distracted driving increased 28% between 2005 and 2008 alone.

## **What the News Law Says**

As of September 1st, texting and driving is a misdemeanor punishable by a fine of \$25 – \$99 for first-time offenders, and \$100 – \$200 for repeat offenders. However, if a driver who is texting causes the death or serious bodily injury of another person, then they can be charged with a Class A misdemeanor punishable by a fine up to \$4,000 and confinement in jail up to 1 year.

It's important to note that the new law only addresses “reading, writing, or sending electronic messages” via a “wireless communication device.” It is still legal for motorists in most cities to use their phone for talking, GPS, navigation, music, or dialing phone numbers.

Drivers may still get pulled over if an officer suspects them of texting. However, under the new law, an officer may not take possession or otherwise inspect the device in the driver's possession, unless authorized under the Code of Criminal Procedure or Penal Code.

To be prosecuted, the illegal act must be done in the presence of or within the view of a peace officer, or established by other evidence. For example, cell phone records or a corroborating witness.

The law does not apply to law enforcement or someone with a FCC license.

Under this law, cities are still free to pass hands-free laws within their city limits that are *stricter* than the new state law. So, while this law trumps the texting while driving ordinances in effect in approximately 100 Texas cities already, there are at least 45 other Texas cities with even stricter cell phone bans (i.e. hands-free laws) that you must follow, such as in Austin, San Antonio, Denton, and El Paso.

Texas also forbids drivers from using hand-held communication devices (phones) in school zones. School bus drivers are not to use cell phones (calling or texting). And, all drivers under 18 may not text or make phone calls while driving—even with a hands-free device – except in an emergency.

## **What you can do**

So, what can you do under the new no-texting while driving law?

Believe it or not, you can still text while your car is at a stop. The law applies to reading, writing, or sending an electronic message “while operating a motor vehicle.” However, it provides an exception – “unless the vehicle is stopped.” Therefore, while the statutory language allows it, hopefully it’s not being done in traffic or at a stop light.

**The new law also allows messaging while driving if:**

Via a hands-free device

To navigate using GPS

To report illegal activity, get emergency help, or enter information in an app regarding traffic and road conditions

Reading a message IF the driver reasonably believed the message is an emergency

Using an affixed device to relay information during work to a dispatcher, or

To activate music.

What remains to be seen is the enforceability and effectiveness of this new law. In fact, many of the same arguments arose during debates over seat belt and helmet laws. On one hand, there are those who say it’s an attempt by the government to micromanage the behavior of adults. Then, there are those who say the law is long overdue and necessary to protect everyone on the roads. So, regardless of where you stand on the issue, the law is here and it’s important to understand what law enforcement, and fellow drivers, now expect.

*The information in this column is not intended as legal advice, but to provide a general understanding of the law. Readers with legal issues, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*

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