

# BAN ON TEXTING AND E-MAILING WHILE DRIVING

Wis. Stat. § 346.89(1) states “[n]o person while driving a motor vehicle shall be so engaged or occupied as to interfere with the safe driving of such vehicle.”

Until December 1, 2010 that was the major focus of the “inattentive driving” statute. On December 1, pursuant to 2009 Wisconsin Act 220, subsections (3)a-b were added to the statute stating that “[n]o person may drive, as defined in s. 343.305(1)(b), any motor vehicle while composing or sending an electronic text message or an electronic mail message.” Exceptions to the statute include (1) operators of emergency vehicles, (2) certain in-vehicle systems (On-Star) that transmit and receive emergency alert messages and messages related to the operation of the vehicle, including global positioning devices, (3) amateur radio operators who hold a valid license issued by the federal communication commission when using dedicated amateur radio 2-way equipment and observing proper operating procedures, and (4) users of voice-operated or hands-free devices if the driver of the motor vehicle does not use his or her hands to operate the device, except to activate or deactivate a feature or function of the device. The penalty for violating Wis. Stat. § 346.89(3) is a fine of not less than \$20 nor more than \$400, and, because it is a moving violation, 4 points on your drivers license.

What does that mean? It means that a person, while driving, cannot compose (write) or send text messages or e-mails while their car, van, truck, motorcycle, bus or any other motor vehicle is in motion. The focus of this new law has been on the texting aspect of it, but it does include a prohibition against composing and sending e-mails. However, it excludes times when the vehicle is stopped at a traffic light, a stop sign or in traffic due to congestion. It does not prohibit reading messages, or using or surfing the internet. Further, it does not prohibit dialing a phone number, making or receiving phone calls, scrolling through contacts, checking one’s electronic calendar, etc.

Of course, this does not permit inattentive driving. Captain Tim Carnahan of the Wisconsin State Patrol believes that driving distractions, such as texting, are simply dangerous and irresponsible. While state troopers usually give drivers 30 days before enforcing a new law, it will not be the case with the texting or e-mailing while driving ban. Carnahan stated “[t]he law becomes effective on [December 1] and it is entirely possible that someone who is violating that law and is witnessed by our law enforcement would be stopped for that violation.” However, State Patrol Superintendent David Collins noted that the state also has a law against inattentive driving, and that drivers could be ticketed under that law if they are distracted by reading text messages or talking on their cell phones. Collins stated “[t]o be very simple, it’s not illegal to read. But we’re not recommending that. We’re not saying that’s

a flaw in the law. We're just saying use common sense."

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As part of 2009 Wisconsin Act 220, the Legislature added requirements to the driving curriculum for Technical College Systems, Wisconsin public schools, and Driving Schools that they "[a]cquaint[] each student with the hazards posed by composing or sending electronic text messages or electronic mail messages while driving and with the provisions of s. 346.89(3)."

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## O'NEIL CANNON NAMES SCHREIBER AND MAIER SHAREHOLDERS

Milwaukee, Wisconsin (January 31, 2011) - O'Neil Cannon is pleased to announce that Attorney John R. Schreiber and Attorney Joseph M. Maier have been elected as shareholders of the firm.

Attorney Schreiber will continue his practice in the Banking and Creditors' Rights practice group assisting creditors, commercial landlords and other entities, in the enforcement, collection and workout of loans, leases and other obligations.

Schreiber received his undergraduate Bachelor's degree from the University of Wisconsin and his law degree from the Marquette University Law School, *cum laude*. He was selected as a 2008, 2009 and 2010 Wisconsin Super Lawyers Rising Star, *Law and Politics and Milwaukee Magazine*, and is a member of the Board of Directors for Groundwork Milwaukee.

Attorney Maier will continue to assist businesses in employee benefit design and ERISA issues, executive compensation planning, income tax planning, state and succession planning, operation and liquidation of business entities and the creation, formation, merger and acquisition of businesses.

Maier received his B.B.A. in accounting, *summa cum laude*, from the University of Wisconsin-Milwaukee and earned his J.D., *summa cum laude*, graduating #1 in his class from the University of Wisconsin-Madison. He was a member of the UW Law Review and is a member of the Society of Financial Services Professionals.

O'Neil Cannon, founded in Milwaukee in 1973, is a full-service legal practice that primarily focuses on providing business law and civil litigation services to closely-held businesses and their owners. The firm represents corporations, institutions and partnerships at all stages of

the business life cycle, helping them start, grow and transition from one generation to the next. We also assist business owners with their personal legal needs including tax and estate planning, family law and litigation – including personal injury litigation.

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## **NEW TAX LEGISLATION ALLOWS FOR ENHANCED ESTATE PLANNING**

The President has signed into law the new tax legislation which recently passed through Congress. Generally, the new tax law extends the existing tax rates for two more years, provides a two percent reduction in the payroll tax, and increases the estate tax exemption to \$5 million. An additional provision in the legislation, which has been given very little attention in the public media, increases the gift tax exemption to \$5 million beginning in 2011. Prior to this, the gift tax exemption was \$1 million. This change will give individuals significantly greater flexibility in their estate planning. The \$1 million gift ceiling was a hindrance to many individuals who wished to do comprehensive estate planning. With this exemption raised to \$5 million, \$10 million per couple, the estate planning options become much more diverse and will allow significantly more freedom to individuals to do planning.

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## **WHY ARE BUY-SELL AGREEMENTS IMPORTANT?**

The term “buy-sell agreement” means any legally enforceable arrangement by and among a business entity or its owners prescribing limitations on the ability to own and to transfer equity interests. It is the linchpin between a business succession plan and the estate plans of the owners in determining the future ownership and control of a business. The terms of a buy-sell agreement can be included in an operating agreement of a limited liability company, a partnership agreement for general and limited partnerships, or in a close corporation agreement for corporate entities.

Most often the terms of a buy-sell agreement are set forth in a separate written document by and among the shareholders of a corporation and the corporation itself. This article focuses on separate written buy-sell agreements involving corporations, even though many of the concepts apply to other types of business entities.

When entrepreneurs are forming a business entity, or a new investor becomes a shareholder, the parties are optimistic that they will all benefit from the financial success of the enterprise.

Introducing the topics of death, disability, termination of employment, and other negative possibilities is comparable to negotiating a prenuptial agreement for a couple about to be wed. Unfortunate but foreseeable events need to be addressed as soon as possible before irreversible commitments are made.

A buy-sell agreement is an integral part of a shareholder's personal estate plan. The creation of a market to liquidate an otherwise nonmarketable asset is crucial to many estate plans. The shareholder's will and trust must contain directions to the fiduciary to comply with and to implement the terms of the agreement. These documents may also direct the fiduciary to accept the provisions of the agreement (such as the valuation methods) without the necessity or duty to inquire as to the validity of the data on which the sale is based or the process by which it is made.

## Control and ownership

In discussing business succession planning, it is advisable to focus on three separate elements:

- (1) Income
- (2) Control
- (3) Equity ownership

While a buy-sell agreement may indirectly affect the income from a business entity, the arrangement more directly affects control and equity ownership.

The company's capital structure and organizational documents determine the control of the enterprise through the election of the board of directors. The managers of the business and perhaps the other shareholders, however, do not want family members who happen to inherit stock to be involved in the management of the business. The separation of control from the equity ownership of the business and the extraction of the value of the equity ownership of the business should be agreed on in writing by the shareholders.

## Who is the purchaser?