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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.”

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).”