



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 463

**Assembly
Amendment 3**

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BACKGROUND

Inattentive Driving: Texting and Emailing While Driving

Wisconsin's inattentive driving statute prohibits a person from engaging in certain activities while driving a motor vehicle. One of the activities prohibited by the inattentive driving statute is driving¹ any motor vehicle "**while composing or sending an electronic text message or electronic mail message.**" [s. 346.89 (3) (a), Stats.] This prohibition on texting and emailing while driving does not, however, apply to any of the following:

- The operator of an authorized emergency vehicle.²
- The use of any device whose primary function is transmitting and receiving emergency alert messages and messages related to the operation of the vehicle or an accessory that is integrated into the electrical system of a vehicle, including a global positioning system device.
- An amateur radio operator who holds a valid amateur radio operator's license issued by the Federal Communications Commission (FCC) when he or she is using dedicated amateur radio two-way radio communication equipment and observing proper amateur radio operating procedures.

¹ "Drive" means "the exercise of physical control over the speed and direction of a motor vehicle while it is in motion." [ss. 343.305 (1) (b), and 346.89 (3) (a), Stats.]

² The term "authorized emergency vehicle" is defined in s. 340.01 (3), Stats. Examples include police, conservation warden, and fire department vehicles, and ambulances.

- The use of a voice-operated or hands-free device 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.

[s. 346.89 (3) (b), Stats.]

The penalty for violating the prohibition on texting while driving is a forfeiture of not less than \$20 nor more than \$400. [s. 346.95 (2), Stats.]

Homicide by Negligent Operation of a Vehicle

Under current law, a person is guilty of the crime of homicide by negligent operation of a vehicle if the person “causes the death of another human being by the **negligent operation or handling of a vehicle.**” A person is also guilty of this crime if the person causes the death of an unborn child by the negligent operation or handling of a vehicle. [s. 940.10, Stats.]

The penalty for violating the crime of homicide by negligent operation of a vehicle is a Class G felony, punishable by a fine not to exceed \$25,000, imprisonment not to exceed six years, or both.

2017 ASSEMBLY BILL 463

2017 Assembly Bill 463 (“the bill”) amends the current prohibition on texting or emailing while driving, to instead provide that no person may “**use an interactive electronic device to enter, transmit, or access data while driving.**” The bill also amends the list of exceptions provided under current law so that the prohibited activity under the bill does not apply to any of the following:

- The operator of an authorized emergency vehicle.
- The use of an interactive electronic device to report an emergency.
- The use of an interactive electronic device for purposes of verbal communication.
- The use of any device whose primary function is transmitting and receiving emergency alert messages and messages related to the operation of the vehicle or an accessory that is integrated into the electrical system of a vehicle.
- The use of an interactive electronic device for purposes of navigation.
- An amateur radio operator who holds a valid amateur radio operator’s license issued by the FCC when he or she is using dedicated amateur radio two-way radio communication equipment and observing proper amateur radio operating procedures.
- The use of a voice-operated or hands-free device 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 bill also increases the minimum penalty for violating the prohibition on the use of an interactive electronic device to enter, transmit, or access data while driving. The penalty for violating the prohibition is a forfeiture of not less than \$100 nor more than \$400.

The bill provides that, for purposes of the crime of homicide by negligent operation of a vehicle, a violation of the bill's prohibition on using an interactive electronic device to enter, transmit, or access data while driving also constitutes **negligent operation or handling of a vehicle**.

ASSEMBLY AMENDMENT 3

Assembly Amendment 3 ("the amendment") modifies the activities prohibited in the bill. Under the amendment, no person may "**physically manipulate an interactive electronic device to enter, transmit, or access data or to compose or send an electronic text message or electronic mail message while driving.**" With respect to the list of exceptions provided under the bill, the amendment does both of the following:

- Replaces the phrase "use his or her hands" with the term "physically manipulate" in the exception related to the use of a voice-operated or hands-free device.
- Creates a new exception for the use of an **electronic logging device**, as defined under federal law,³ or an **automatic on-board recording device**, as defined under federal law.⁴

Also, under the amendment, for purposes of the crime of homicide by negligent operation of a vehicle, a violation of the prohibition on physically manipulating an interactive electronic device to enter, transmit, or access data or to compose or send an electronic text message or electronic mail message while driving also constitutes **negligent operation or handling of a vehicle**.

BILL HISTORY

The amendment was introduced by Representative Tusler on October 26, 2017. On November 16, 2017, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of the amendment by a vote of Ayes, 7; Noes, 2; and passage of the bill, as amended, by a vote of Ayes, 6; Noes, 3.

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³ "Electronic logging device" means "a device or technology that automatically records a driver's driving time and facilitates the accurate recording of the driver's hours of service, and that meets the requirements of subpart B of this part." [49 C.F.R. s. 395.2.]

⁴ "Automatic on-board recording device" means an "electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically as required by § 395.15. The device must be integrally synchronized with specific operations of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speed, miles driven, the date, and time of day." [49 C.F.R. s. 395.2.]