



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: March 2, 2010

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, ^{SCPD}Chairperson
State Council for Persons with Disabilities

RE: H.B. 298 [Hand-held Cell Phone Ban]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 298 which prohibits operation of a motor vehicle while using a hand-held cell phone. There is an exemption for law enforcement personnel. There is also an exemption for school bus operators who are subject to the Title 21 Del.C. §4176B. A violation results in a civil penalty of up to \$50.00. Subsequent violations subject the driver to a \$100 civil penalty. SCPD endorses the concept of banning hand-held cell phone since they reduce the number of traffic accidents which often result in spinal cord and traumatic brain injuries. However, Council suggests that the bill could be improved consistent with the following observations.

First, the word “and” should be inserted in line 7 between the words “enforcement” and “emergency”.

Second, this bill would not affirmatively preempt municipal or county ordinances. Contrast H.S. 1 for H.B. No. 40 [preempting local ordinances]. Consistent with the attached articles, a uniform state law in this context would be preferable. Wilmington and Elsmere have already adopted hand-held cell phone bans and a “patchwork” approach in which different exemptions and penalties would apply across the State is undesirable. SCPD recommends adding a preemption provision to the legislation.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or recommendations on the proposed legislation.

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council



October 17, 2009

State needs to act on drivers' cell phone use

JOE MIRO

Wilmington recently enacted an ordinance to bar the use of hand-held cell phones by motorists in the city. Starting New Year's Day, drivers caught using cell phones that are not equipped with a hands-free device will face a fine of \$50.

The new law is a primary offense, so police officers can enforce it without the need to have any other reason for stopping the motorist.

I applaud the courage of the city council and mayor to take a potentially unpopular action in an attempt to protect the safety of motorists, bicyclists and pedestrians in Wilmington.

Having said that, I worry that allowing our state's three counties and nearly five dozen municipalities to enact their own ordinances with regard to cell phones and driving will result in a confusing Balkanization of regulations. If other local governments follow Wilmington's example, it's not hard to imagine a situation where a person driving from one end of the state to the other could be subject to a dozen different laws regulating the use of cell phones.

It's also not a leap of logic to believe that some jurisdictions might see an ordinance barring the use of hand-held cell phones as an opportunity to generate revenue. Once such a statute was in place, a police officer would need only to monitor the traffic at a busy intersection to catch motorists unaware of the local restriction.

Let me be clear. I believe the City of Wilmington did the right thing for the right reasons in enacting its cell phone ordinance. In fact, I think it should be state law and I'm not alone.

Earlier this year, the National Safety Council called for motorists to stop using cell phones and messaging devices while driving. Additionally, the NSC urged governors and legislators in all 50 states to enact laws banning it. Janet Froetscher, president and CEO of the NSC, noted that some studies show talking on a cell phone puts drivers at a four times greater risk of a crash.

The NSC cited a Harvard Center of Risk Analysis study that estimates that cell phone use while driving contributes to six percent of crashes. Applying that to all U.S. traffic accidents would mean that cell phones play a role in 636,000 crashes, 330,000 injuries and 2,600 deaths annually.

In Delaware, according to the State Police, cell phones were a factor in 252 traffic accidents last year. In 2007, cell phones were cited as contributing to 214 accidents. Since the state began tracking traffic mishaps involving cell phones, the number has trended upward annually.

There is legislation pending action in our State House of Representatives that would ban cell phone conversations of any kind while operating a motor vehicle. While House Bill 229 is well-intentioned, I think an outright ban a little too extreme.

A survey by Nationwide Insurance on the issue of distracted driving shed some light on the extent of the problem and the challenges it poses. Over half of the respondents admitted to using a cell phone while driving. Forty-five percent of those surveyed said they had been hit, or nearly hit, by another

driver using a cell phone.

The polling also showed that 67 percent of respondents indicated they support laws restricting phone calls while driving. Of those who said they've used cell phones while driving, 82 percent say their behavior would change if laws were passed.

On two previous occasions I have sponsored bills to ban the use of handheld cell phones while driving. Both times the measures failed, but we would not be breaking new ground on this issue. Six states have such laws: California, Connecticut, New Jersey, New York, Oregon and Washington.

Delaware already bans the use of cell phones by novice drivers and school bus drivers. Those laws are an acknowledgement that cell phone use poses an unacceptable distraction.

I believe the use of hand-held cell phones by motorists exposes our residents to an increased level of risk. The General Assembly has a duty to revisit this public safety threat when its session resumes in January. If my colleagues fail to act, the vacuum will be filled by a confusing patchwork of cell phone laws.



December 30, 2009

Delaware roadways: Drivers, time to hang up

Use of hand-held cell phones to be banned in Wilmington, Elsmere starting Jan. 1

By ADAM TAYLOR
The News Journal

Investing in hands-free devices for cell phones and other gadgets before Friday could be a wise move for motorists in <http://76.12.60.78/>>Wilmington and <http://www.townofelsmere.com/>>Elsmere.

If they don't, they might have to get their checkbooks out anyway.

Laws that include \$50 fines for each offense go into effect Jan. 1 in both cities to ban hands-on talking, texting or Web surfing while driving and using any number of high-tech devices.

Though the cities are the first in the state to approve the restrictions, two laws calling for similar statewide bans will be considered when lawmakers reconvene in two weeks.

In the meantime, Wilmington companies such as Parcels Inc., a downtown document management firm, recently purchased hands-free devices for all of its couriers and delivery people.

"They will have to be replaced from time to time, which is an additional expense," Parcels' Vice President Sean Kennedy said. "But I don't know anyone who can really argue that following this new law would not make it safer to be driving in the streets, so we'll make the adjustments and abide by the law."

Wilmington Councilman Michael A. Brown Sr., who sponsored the law, hopes it saves lives.

"I'm just hoping that the people driving through Wilmington will at least pay attention to this law and stop talking and texting while they drive," he said. "It's a ridiculous practice and an important one to stop."

Brown said he knows of no residents who have questioned the new law's wisdom — only whether it will be enforced. City police Tuesday said there should be no worries about that.

"People need to be as alert and as attentive while driving as they possibly can be," Public Safety Director James Mosley said.

"This is a tool we can use to make that happen. We're glad we have it and we plan to use it."

Wilmington's law was passed earlier in the year but doesn't go into effect until Friday because officials wanted to give residents some warning that it was coming. News releases were issued and notices accompanied water-sewer bills to try to alert them to the change, city spokesman John Rago said.

Elsmere's notification process was different. Signs were placed at all major entry points in town.

And since Nov. 1, police have issued 190 warnings to drivers. Starting Friday, the \$50 fines will be written.

"We wanted to give them a two-month period to get used to it," Elsmere Police Lt. Christopher Workman said. "We hand them little postcards with the warnings and we tell them all, 'Look, come Jan. 1, the game's on.'"

Workman said the amount of vehicle stops won't go down come Friday.

"It will definitely be a point of emphasis for the department," he said. "Cell phones are so common that people use them when they drive and just don't think about the safety aspect of it."

The laws in Wilmington and Elsmere both consider using a cell phone while driving to be a "primary offense," meaning officers would need no other probable cause — like swerving or speeding — to pull over a violator. Both also apply to bicyclists.

Brown said he doesn't care if this makes some residents wary that police might use the law to profile minorities.

Wilmington Police Chief Michael Szczerba said he's ready to use the law regardless.

"This law is all about making our community streets safer," Szczerba said. "We will most certainly enforce it, whether the driver is simply inattentive or a gun-carrying felon."

Szczerba said his biggest concern is officer safety and pointed to a recent incident as an example of how dangerous a vehicle stop can be. A car was pulled over for a faulty brake light and two of its five occupants had loaded handguns.

Andrea Summers, spokeswoman for Delaware's Office of Highway Safety, said the local laws are OK as far as they go, but noted that inattentive driving goes beyond talking on the phone, sending or receiving text messages and surfing the Internet.

"Eating or turning around to argue with the kids can just as easily be the cause of distracted driving," she said.

Summers said her office would like any state law passed this year to comprehensively address the issue of distracted driving. A good statewide law also would provide uniformity and be better than having individual municipalities passing potentially different restrictions.

"That would become confusing for drivers going from town to town," Summers said.

Earlier this year, it became illegal in Philadelphia to talk, text or e-mail on the phone while driving, but those activities are allowed elsewhere in Pennsylvania.

California, Connecticut, New Jersey, New York, Washington state and the District of Columbia have made it illegal for motorists to use hand-held cell phones.

In Delaware, there were 258 crashes involving cell-phone use last year — up slightly from 2007. Two resulted in deaths.

In a poll released earlier this year by AAA Mid-Atlantic, 71 percent of AAA members considered "distracted drivers" as one of their top three concerns when they are on the road. Drivers sending text messages and using cell phones without hands-free devices were by far the top two most dangerous distracting activities in the minds of those polled.

AAA Mid-Atlantic spokeswoman Catherine L. Rossi said the organization will be lobbying for passage of a statewide law this year. Officials from the group are talking with lawmakers now about what the bill should include.

"We know the problem of distracted driving is growing, mostly because of electronic devices," she

said. "The challenge is: How do we change driver behavior?"
