



## Ohio texting, distracted driving ban seriously flawed, expert says

By Maggie Thurber

Feb. 18, 2015

As part of the new “Drive Toward a Safer Ohio,” the state wants to stop distracted driving.

But the actual language in the transportation bill is seriously flawed, Walter Olson, a senior fellow in constitutional studies at the Cato Institute, says.

House Bill 53 <sup>[2]</sup> makes distracted driving a secondary offense – meaning a motorist cannot be stopped just for that alone. But the devil is in the details, and those details make the measure wrong on a number of levels, Olson said.

The bill prohibits any person from committing a moving violation while either using an electronic wireless communications device in any manner; or engaging in any activity that is “not necessary to the driving of a motor vehicle and impairs, or reasonably would be expected to impair, the ability of the person to drive the motor vehicle safely.”

A “electronic wireless communications device” is a wireless telephone, text-messaging device, personal digital assistant, computer, laptop, tablet, or anything that is designed or used to communicate text.

First, there’s a fine: \$100 for a first offense and \$300 for a second or subsequent offense.

Second, it’s a mandatory court appearance.

And, if someone pleads guilty or is convicted of distracted driving with vehicular homicide, the fine and jail time are doubled.

The fine money would go into a new fund to pay for driver education courses for those who cannot afford them.

Olson said the first issue was an overly broad definition of electronic communication device.

“It is probably intended to include hands-free devices,” he said. “And it’s not just current technology but any future electronic devices that could potentially be lifesaving.”

“It then moves from overly broad to overly vague with the phrase ‘any activity.’ Suddenly there’s a real judgment call about any unnecessary activity – from scooping popcorn into your mouth to looking in a visor mirror to adjust your hair,” Olson said.

“Who knows what can be distracting under any circumstances? Maybe judges will sort it out,” he said. “Maybe they won’t.”

Even talking could be covered under activities not necessary to driving, he said.

“Relatives in the car can be a lot more distracting,” Olson said.

Maybe judges will say interactions with other people in the car will never be distracting, he said, but that undercuts the intention of the law.

“When it could mean years and years of jail time for an unintended accident, then vagueness and the over-breadth of the law is more frightening,” he said.

That’s just the language of the proposal, he said. What about the unintended consequences?

“There are a lot of different ways in which people use their phone to improve their safety,” he said. “Yet all these conversations go forward as if all the impacts are negative.”

Doug Scoles, state executive director of Mothers Against Drunk Driving, said he sees it differently.

“Today, along with the advances in technology, we now encounter a generation that multi-tasks as second nature, to the point that it commonly occurs even while driving. All of this has recently and almost all at once resulted in a significant increase in the occurrences of distracted driving,” he told a House committee during testimony on the bill.

He said MADD has broadened its focus to distracted driving.

“Distracted driving, not unlike drunk and impaired driving, will likely result in many more tragic crashes, injuries and deaths on our roadways,” Scoles said.

But in 2010, ABC news reported <sup>[3]</sup> that researchers at the Highway Loss Data Institute “found no reduction in car collisions after texting-while-driving laws took effect.”

“The researchers calculated rates of collision claims for vehicles in California, Louisiana, Minnesota and Washington, immediately before and immediately after those states banned texting while driving.

“Not only did the researchers find that crashes did not decrease after texting bans, they found that in three states, crashes actually increased slightly.”

According to a 2013 study by the American Economic Association <sup>[4]</sup>:

“... bans appear moderately successful at reducing single-vehicle, single-occupant accidents if bans are universally applied and enforced as a primary offense. Bans enforced as secondary offenses, however, have at best no effect on accidents. Any reduction in accidents following texting bans is short-lived, however, with accidents returning to near former levels within a few months. This is suggestive of drivers reacting to the announcement of the legislation only to return to old habits shortly afterward.”

And another study on texting-while-driving laws published in the August 2014 issue of the American Journal of Public Health <sup>[5]</sup> found that while making it a primary offense had a 3 percent reduction in traffic fatalities, “(s)econdarily enforced restrictions were not associated with traffic fatality reductions in any of our analyses.”

Despite these studies, Olson predicted the Ohio bill would pass. He said it is “well-meaning” but will end up being “a widely ignored law.”

“At some point, you’d think they’d have learned their lesson. Remember Prohibition,” he asked. “They’re going into this knowing that most people are potential violators. It seems like they’re inviting people to become lawbreakers.”

State Rep. Cheryl Grossman, R-Grove City, the sponsor of the bill, did not return requests for comment