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DISTRACTION *By Curtis N. Stambaugh*

Distracted driving has become a catch-phrase to summarize the many things that take our concentration away from the task at hand when we are behind the wheel of a vehicle. It has also become a hot topic in transportation law, as organizations lobby for legislation, and governmental agencies and legislative bodies scramble to develop a fix. The statistics on distracted driving are quite compelling: According to the National Highway Traffic Safety Administration, nearly 6,000 people died in 2008 in crashes involving a distracted or inattentive driver, and more than half a million were injured. Texting while driving is a subset of distracted driving that gets particular attention. A Virginia Tech study found that texting while driving made a person 23 times more likely to be in an accident.

The statistics support doing something, but the devil is in the details. What constitutes a distraction? This question results in many answers. According to the U.S. Department of Transportation, distracted driving includes behaviors such as eating, drinking, talking to passengers, and changing the radio station. Since no legislator wants to take on banning those activities while driving, the focus has centered on the use of hand held electronic communication devices. However, banning that source of distraction

comes with its own set of challenges, as demonstrated by a piece of legislation that passed the Pennsylvania House of Representatives on January 26, 2010 and is now pending in the Pennsylvania Senate.

Pennsylvania House Bill 2070 (HB 2070) was introduced with bipartisan support and seeks to prohibit the use of an “interactive wireless communication device” (IWCD) while driving. IWCD is defined to include a wireless telephone, personal digital assistant, smart phone, portable or mobile computer, or similar device which can be used for voice communication, texting, e-mailing, browsing the internet or instant messaging. It specifically does not include a device being used exclusively as a gps or navigation system or a device physically or electronically integrated into the vehicle. The bill expressly allows the use of an IWCD for voice communication in hands-free mode and “reading, selecting or entering a telephone number or name into an [IWCD] for the purpose of voice communication.” The bill also states that it does not authorize seizure or forfeiture of an IWCD.

When taken as a whole, the difficulty for law enforcement created by HB 2070 emerges. The bill would make it a primary offense to use an IWCD while driving. As a primary offense, a police officer could initiate a traffic stop based on probable

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cause that the driver is using an IWCD. What would constitute “probable cause” seems to be limited to visual observation by the police officer that the driver was pushing the buttons or otherwise manipulating an IWCD. However, the driver may be doing something entirely legal under the bill as written – “reading, selecting or entering a telephone number or name . . . for the purpose of voice communication.” Since the officer could not seize the IWCD as evidence, it would seem that the burden of proof that what was occurring was something legal versus illegal would shift to the driver.

The driver could show the officer the call log, or the text log to demonstrate that he or she was dialing and not texting or checking email. But what if the driver was simply looking for a phone number and never dialed the phone? How will the driver prove he or she was not checking email or viewing a text message? These will be challenges that will undoubtedly require a resolution in the court system. The current version of HB 2070 only provides for a \$50 fine and no points on the driver’s license. It is unlikely, therefore, that

many people will challenge a citation under this bill if it becomes law. The more likely challenge will come when an officer uses the prohibition to initiate a traffic stop and then observes some other criminal activity (i.e. open container of alcohol, indicia of intoxication by the driver, contraband in plain view) that results in more serious charges.

We all can see the dangers of distracted driving. From the myriad of electronic devices that we carry, the new technology in our vehicles, the passengers we are carrying, drive-through food or coffee, or the billboard we drive by, there are many things to take our attention away from the road. We should all strive to pay more attention to our driving and less to the things that distract us. The difficulty is in finding an effective way to force us to do that. ■



Curtis N. Stambaugh is chair of the Transportation, Distribution and Logistics Group and also practices in the Oil and Gas Law, Environmental Law and Toxic Tort, and Food Industry Groups.
cstambaugh@mwn.com / 717.237.5435

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McNees Transportation, Distribution and Logistics Group

Curtis N. Stambaugh, Chair
717.237.5435/cstambaugh@mwn.com

James J. Franklin
717.237.5375/jfranklin@mwn.com

Schaun D. Henry
717.237.5346/shenry@mwn.com

Barbara A. Darkes
717.237.5381/bdarkes@mwn.com

Kandice J. Giurintano
717.237.5452/kgiurintano@mwn.com

Kimberly A. Selemba
717.237.5359/kselemba@mwn.com

The Transportation, Distribution and Logistics Alert is edited by Kimberly A. Selemba. Kimberly is a member of the firm's Litigation, Injunction, and Transportation, Distribution and Logistics practice groups.

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