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KEEP YOUR HANDS OFF! - Minnesota's "Hands-Free" Law Takes Effect August 1, But Does The Law Really Say What Was Intended?

According to the Minnesota Office of Traffic Safety, starting on August 1, Minnesota drivers must drop their cell phones when they're behind the wheel. That's because in April 2019 the Governor signed into law changes to Minnesota Statute 169.475 which discusses the use of wireless communication devices while driving. The first violation of the statute is a warning or nominal fine, but a second or subsequent violations will run \$275. This new revision of the statute is often referred to as the "Hands Free Law."

To get the word out about the new law, the State of Minnesota is informing the public :

"Governor Tim Walz signed a new hands-free cell phone bill into law to help further reduce distractions behind the wheel.

Starting Aug. 1, drivers will no longer be able to hold their cell phones in their hands . They will be able to use their phones to make calls, text, listen to music or podcasts and get directions, but only by voice commands or single touch activation without holding the phone .

Remember, hands-free is not necessarily distraction-free. We want Minnesotans to stay safe, stay alive and stay out of trouble under the new law."

(emphasis added). The State is also offering more information about the changes to the law and how to comply with it. News outlets are reporting tips and information about the new rules, too.

The dangers of distracted driving, particularly because of cell phone use, is an epidemic in American society. Some studies say that distracted driving, particularly cell phone texting, contributes to more than 1.6 million accidents per year. OLWK strongly supports the push to eliminate accidents and injuries caused by distracted driving. Any attempt, including government enforcement of penalties, to eliminate distracted driving is probably a good idea. But does Minnesota's "Hands-Free Law" really make Minnesota a hands-free state?

The new Minnesota law basically states that a person operating a motor vehicle on a street or highway is prohibited from using a wireless communication device to text, call, or access files on the device. The law provides exceptions to that general prohibition, and the focus of all the recent publicity is about Subd 2(a)(1): the voice-activated or hands-free operation exception. The statute states that the general prohibition does not apply if the operator uses the device "solely in a voice-activated or hands-free mode to initiate or participate in a cellular phone call or to initiate, compose, send, or listen to an electronic message." Minn. Stat. 1496.475, Subd. 3(a)(1).

What does it mean to operate a device in a voice-activated or hands-free mode? The April 2019

statutory changes attempts to define “voice

activated or hands-free:"

"'Voice-activated or hands-free mode' means an attachment, accessory, wirelessly paired or tethered capability, application, wireless connection or built-in feature of a wireless communication device or a motor vehicle that allows the person to use verbal or single touch commands to:

- (1) activate or deactivate the device; and
- (2) activate or deactivate a function or software application of the device.

Voice-activated or hands-free mode does not include typing or scrolling on a device."

Minn. Stat. Section 169.475, Subd. 1(c).

Interestingly, there is no mention of a driver physically holding a wireless device in either this new definition, the general prohibition against using wireless devices, or the "hands-free" exception. In fact, contrary to what is being promoted, the plain language of both the new definition and the new hands-free exception appear to specifically contemplate that a driver may be holding his or her phone, because they mention one-touch operation of the device and specifically say it does not include typing or scrolling. In contrast, the other exceptions to the general prohibition, which allow for the accessing of GPS functions or audio-based content, specifically mention the operator cannot hold the device in his or her hands. Those exceptions apply to the general rule, "provided that the person does not hold the device with one or both hands." Minn. Stat. 169.475, Subd. 3(a)(2) and (3).

Why is there no mention of holding the device to text or call in the hands-free exception? Does it mean you can hold your phone and use your speaker function on your iPhone to have Siri text your spouse to say you're on your way home? Can you say, "Hey Google, call the office" while holding your phone in your hand, but not up to your ear? Do you have to mount your phone on your dashboard or something so it's not in your hand when you're using the speaker phone function? The State has taken a great step to try to eliminate distracted driving, but it seems the law as written may not clearly state what was intended. At least it's not as clear as a similar law in Oregon:

"(2) A person commits the offense of driving a motor vehicle while using a mobile electronic device if the person, while driving a motor vehicle on a highway or premises open to the public:

Holds a mobile electronic device in the person's hand . . . "

ORS § 811.507 subd. 2 (emphasis added).

There must have been some reason the Minnesota Legislature included the language about actually holding the device in some exceptions, but not in the phone and electronic message exception, the so-called "Hands Free Law." The issue may require court interpretation of the legislative history down the road.

If you have any questions about this new "Hands-Free" law or other motor vehicle related questions, please contact Mike Skram or anyone in the Firm's Motor Vehicle and Transportation Practice Group ([link to page](#)) at 952-831-6544