



It Seems to Us

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Distracted Driving Legislation: Proceed With Caution

“For decades, radio amateurs have been operating while driving without being perceived as a threat to highway safety. In the face of legislation to ban unsafe practices such as texting while driving it is natural to want clear exemptions for Amateur Radio — but beware of unintended consequences.”

Guiding a motor vehicle down a busy street or highway is serious business. Drivers must cope with constant distractions on the roadside, in their vehicles, and even in their own heads. A moment of inattention to what's happening in the road ahead can have tragic consequences.

While it clearly is impossible to legislate all such distractions out of existence, highway safety advocates and legislators do their best to discourage what they regard as unsafe practices. When cellphones came into general use, a number of states and municipalities moved to prohibit hand-held cellphone use while driving. Radio amateurs have a long record of driving responsibly while operating mobile, so we were understandably concerned that such legislation differentiate two-way radio operation — which we and others have combined successfully with driving for many years — from the more distracting activity of holding a phone against one's ear and carrying on a full-duplex conversation, or, even worse, reading text messages. In 2009 the ARRL Executive Committee, acting on instruction from the Board of Directors, adopted a policy statement on mobile Amateur Radio operation that includes recommended statutory language for state motor vehicle codes.

In Connecticut, where ARRL Headquarters is located, drivers' use of hand-held mobile telephones and certain other electronic devices was prohibited in 2005. The definition of prohibited devices was sufficiently specific and did not include Amateur Radio equipment, but some amateurs were pulled over anyway. They then had to explain to the officer that they weren't violating the law and, failing that, had to either take the time to appear in court or pay the fine.

Understandably, some Connecticut amateurs decided to seek a specific exemption for Amateur Radio mobile operation. In 2011 they found a sympathetic state senator who in the following year guided an exception for “the use of a hand-held radio by a person with an amateur radio station license issued by the Federal Communications Commission,” through the legislative process. While this legislation was under consideration, we had our fingers crossed that no amendment would be proposed to limit the exception to emergency situations; that had happened elsewhere and had made things worse, rather than better, for routine mobile operation. But that didn't happen in 2012 in Connecticut, and we were relieved when the exception was signed into law and became effective on October 1 of that year.

Our relief was short-lived.

While this was going on at the state level, Congress was working on federal legislation called the Moving Ahead for Progress in the 21st Century Act (MAP-21). Included in the provisions of this 584-page transportation bill was funding for a new Distracted Driving Grant Program to encourage states to enact and enforce distracted driving laws. MAP-21 was signed into law on July 6, 2012 as Public Law 112-141.

To qualify for a grant, a state must enact and enforce statutes prohibiting “texting through a personal wireless communications device while driving,” as well as any use of such a device by a driver under the age of 18. The law appropriately defines “personal wireless communications device” as a device through which “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services” are transmitted. This should leave Amateur Radio equipment in the clear. However, the law also provides for three exceptions that a state may include in its statutes, one of which is “a driver who uses a personal wireless communications device to contact emergency services.”

When the State of Connecticut applied for a grant to the National Highway Traffic Safety Administration (NHTSA) it was advised that its distracted driving statute was not in compliance with the conditions of the program because its Amateur Radio exception was not one of the three exceptions permitted under the law. And sure enough, the Notice of Funding Availability issued by NHTSA lists the three permitted exceptions and goes on to say, “No other exceptions are permitted under MAP-21.” The state was not about to turn away federal money, so in its 2013 session the Connecticut General Assembly amended the statute to limit the use of a hand-held radio by a licensed amateur to emergencies only — exactly what we were hoping to avoid.

We have made the argument to NHTSA that because an Amateur Radio transceiver is not a “personal wireless communications device,” as defined in the law, an exception for Amateur Radio — in other words, to permit something that wasn't prohibited anyway — should not affect a state's eligibility for a grant. We have not received a reply. We made the same case to the friendly Connecticut legislator who took up the cause in the first place, but while he remains sympathetic there is nothing else the state can do if it wants to receive a grant.

While not a disaster for Connecticut amateurs — the “emergencies only” limitation only applies to hand-held radios — the outcome is far from what was sought two years ago.

The season for new state legislation will soon be upon us. As you consider what you might ask of your legislators, keep Connecticut's experience in mind — and proceed with caution.