

Distracted Driving Is Commonly Misunderstood



Technically, the term "distracted driving" is a misnomer as such a term fails to exist within the *Highway Traffic Act, R.S.O. 1990, c. H.8* ("*HTA*"). Also, contrary to urban myths, what is meant by "distracted driving" is the use of a hand held communication device rather than common conduct such as eating, drinking, changing the radio station, lighting a cigarette, or other behaviours that may be perceived as a temporary distraction. Of course, these temporary distracting behaviours may involve a moment of inattention; however, in law, such a moment of inattention is defined without use of the word, "distraction".

The confusion appears to arise from the common use of the term 'distracted driving' in the context of summarizing various concerns that are actually specified and defined within the *HTA*; however, many people subsequently perceive that any 'distraction' therefore qualifies within the non-existent law of "distracted driving".

Here is what the law actually says:

Hand-Held Devices Prohibited

Wireless Communication Devices

78.1 (1) No person shall drive a motor vehicle on a highway while holding or using a hand-held wireless communication device or other prescribed device that is capable of receiving or transmitting telephone communications, electronic data, mail or text messages.

Entertainment Devices

(2) No person shall drive a motor vehicle on a highway while holding or using a hand-held electronic entertainment device or other prescribed device the primary use of which is unrelated to the safe operation of the motor vehicle.

Hands-Free Mode Allowed

(3) Despite subsections (1) and (2), a person may drive a motor vehicle on a highway while using a device described in those subsections in hands-free mode.

Exceptions

(4) Subsection (1) does not apply to,

(a) the driver of an ambulance, fire department vehicle or police department vehicle;

(b) any other prescribed person or class of persons;

(c) a person holding or using a device prescribed for the purpose of this subsection; or

(d) a person engaged in a prescribed activity or in prescribed conditions or circumstances.

Same

(5) Subsection (1) does not apply in respect of the use of a device to contact ambulance, police or fire department emergency services.

Same

(6) Subsections (1) and (2) do not apply if all of the following conditions are met:

1. The motor vehicle is off the roadway or is lawfully parked on the roadway.

2. The motor vehicle is not in motion.

3. The motor vehicle is not impeding traffic.

Penalty

(6.1) Every person who contravenes this section is guilty of an offence and on conviction is liable,

(a) for a first offence, to a fine of not less than \$500 and not more than \$1,000;

(b) for a first subsequent offence, to a fine of not less than \$500 and not more than \$2,000; and

(c) for a second subsequent or an additional subsequent offence, to a fine of not less than \$500 and not more than \$3,000.

Same

(6.2) If a person is convicted of an offence under this section, the Registrar shall suspend his or her driver's licence,

(a) for a first offence, for three days;

(b) for a first subsequent offence, for seven days; and

(c) for a second subsequent or an additional subsequent offence, for 30 days.

Same

(6.3) An offence under this section committed more than five years after a previous conviction for an offence under this section is not a subsequent offence for the purposes of subsection (6.1) or (6.2).

Regulations

(7) The Minister may make regulations,

(a) prescribing devices for the purpose of subsections (1) and (2);

(b) prescribing persons, classes of persons, devices, activities, conditions and circumstances for the purpose of subsection (4).

Definition

(8) In this section,

“motor vehicle” includes a street car, motorized snow vehicle, farm tractor, self-propelled implement of husbandry and road-building machine.

Summary Comment

From a fully technical viewpoint, the term "distracted driving" fails to exist and is unmentioned within the *HTA*; however, what is generally meant by "distracted driving" is the use of communication devices or other electronic devices specified within the *HTA*. Conduct such as reading a book, eating a cheeseburger, changing the radio station (built-in radio), among many other things, fail to constitute as "distracted driving"; however, such activities may constitute as "[careless driving](#)". For more information, [click here](#) for what the Ontario government similarly says.