

## Texting ban creates legal enigma for Idahoans

By Wayne Hoffman

One of the more curious legacies of the 2012 legislative session will likely be Senate Bill 1274, the bill to ban texting while driving. The bill passed the Senate 29-6 and the House 53-17. The bill is awaiting Gov. Butch Otter's signature.

Legislators passed this texting ban in an attempt to answer a cry from constituents to "do something" about a perceived problem. But legislators vote on words. Words have meanings and meanings have consequences. In its attempt to stop people from falling victim to distracted texting drivers, the Legislature has created a legal enigma that necessarily will make unsuspecting Idahoans victims of an unforgiving legal system.

Should this bill become law, its implementation and enforcement will be fascinating, because the law's construction is, well, difficult to imagine in real life. To illustrate the difficulty, you have to understand the limitations of Idaho's soon-to-be texting law:

Under the statute, it will be illegal to text and drive, with each crime resulting in an infraction. The law will define "texting" to mean "engaging in the review of, or manual preparation and transmission of, written communications via handheld wireless devices." Voice-activated devices are not included in that definition.

Here's where the fun begins. The law specifically says illegal texting requires a handheld device. Therefore, if you text using your cellphone, you are breaking the law. But if you're texting using your dash-mounted device (as many new car models are starting to include), that's legal. If you're surfing the web from your dashboard, that's legal, but if you're doing it with your phone, that's illegal. Of course, some might argue that surfing the web isn't truly "engaging in the review of ... written communications" anyway. Surf Facebook or your favorite news website all you like, under Idaho's texting law. Maybe. Or maybe not.

If you're using your phone's GPS to navigate, it's illegal to enter navigation information into your phone, but not into your car's built-in system. But you might be able to use either device to follow directions to your destination, so long as you don't type in anything.

And if you don't have a fancy new car with which to evade Idaho's texting ban, there may be a way around it: While it is clearly illegal to send a text on your cellphone in your hand, it might be legal to use your phone if your phone is mounted in some kind of a holder. It is conceivable that you can't call a phone mounted to plastic and hooked to a suction cup attached to your car's frame "handheld."

We're not sure if that negates your phone's handheldness under Idaho statute. But details are inconvenient.

Under questioning during debate about some of the nuances raised here, Rep. Julie Ellsworth, R-Boise, said the bill may or may not cover these instances. And if they don't, said Ellsworth, the Legislature can come back next year and fix the shortcomings.

In the meantime, the next question becomes how law enforcement will tell, from across a highway at 60 miles an hour, whether someone is texting or just web surfing, using a handheld device or something else. Or whether a person is dialing the phone (legal) or texting (illegal, maybe). The answer is officers will depend on people to self-incriminate—to confess to texting when they're stopped for another crime. And if the criminal justice system is really lucky, the accused will simply pay the fine and avoid the hassle of a court appearance. This “judicial tax” will mean none of the questions raised here will ever be litigated. Or resolved.