

DISTRACTED DRIVING LAWS INVOLVING PORTABLE ELECTRONIC DEVICES

January 19, 2016 - Helena Gardner

Definition of Portable Electronic Device

23 V.S.A. § 4(82) (added 2010, amended 2014)

(82) "Portable electronic device" means a portable electronic or computing device, including a cellular telephone, personal digital assistant (PDA), or laptop computer. "Portable electronic device" does not include a two-way or Citizens Band radio, or equipment used by a licensed Amateur Radio operator in accordance with 47 C.F.R. part 97.

I. Law Governing Junior Operators (enacted 2010, amended 2014 and 2015)

23 V.S.A. § 1095a:

(a) A person under 18 years of age shall not use any portable electronic device as defined in subdivision 4(82) of this title while operating a moving motor vehicle in a place open temporarily or permanently to public or general circulation of vehicles.

(b) In addition, a person under 18 years of age shall not use any portable electronic device while operating a motor vehicle on a public highway, including while the vehicle is stationary unless otherwise provided in this section. As used in this subsection:

(1) "Public highway" means a State or municipal highway as defined in 19 V.S.A. § 1(12).

(2) "Operating" means operating a motor vehicle on a public highway, including while temporarily stationary because of traffic, a traffic control device, or other temporary delays. "Operating" does not include operating a motor vehicle with or without the motor running when the operator has moved the vehicle to the side of or off the public highway and has halted in a location where the vehicle can safely and lawfully remain stationary.

(c) The prohibitions of this section shall not apply when use of a portable electronic device is necessary for a person to communicate with law enforcement or emergency service personnel under emergency circumstances.

II. Law Prohibiting Texting While Driving (enacted 2010, amended 2013 and 2015)

23 V.S.A. § 1099:

(a) As used in this section, "texting" means the reading or the manual composing or sending of electronic communications, including text messages, instant messages, or e-mails, using a portable electronic device as defined in subdivision 4(82) of this title. Use of a global positioning or navigation system shall be governed by section 1095b of this title.

(b)(1) A person shall not engage in texting while operating a moving motor vehicle in a place open temporarily or permanently to public or general circulation of vehicles.

(2) In addition, a person shall not engage in texting while operating a motor vehicle on a public highway in Vermont, including while the vehicle is stationary unless otherwise provided under this section. As used in this subdivision (b)(2):

(A) "Public highway" means a State or municipal highway as defined in 19 V.S.A. § 1(12).

(B) "Operating" means operating a motor vehicle on a public highway, including while temporarily stationary because of traffic, a traffic control device, or other temporary delays. "Operating" does not include operating a motor vehicle with or without the motor running when the operator has moved the vehicle to the side of or off the public highway and has halted in a location where the vehicle can safely and lawfully remain stationary.

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of not less than \$100.00 and not more than \$200.00 for a first violation, and of not less than \$250.00 and not more than \$500.00 for a second or subsequent violation within any two-year period.

III. Law Prohibiting Handheld Use (enacted 2013 to apply only in work zones; amended in 2014 to extend generally to highways in Vermont; amended in 2015)

23 V.S.A. § 1095b:

(a) **Definition.** As used in this section, "hands-free use" means the use of a portable electronic device without use of either hand by employing an internal feature of, or an attachment to, the device.

(b) Use of handheld portable electronic device prohibited.

(1) A person shall not use a portable electronic device while operating a moving motor vehicle in a place open temporarily or permanently to public or general circulation of vehicles.

(2) In addition, a person shall not use a portable electronic device while operating a motor vehicle on a public highway in Vermont, including while the vehicle is stationary unless otherwise provided in this section. As used in this subdivision (b)(2):

(A) "Public highway" means a State or municipal highway as defined in 19 V.S.A. § 1(12).

(B) "Operating" means operating a motor vehicle on a public highway, including while temporarily stationary because of traffic, a traffic control device, or other temporary delays. "Operating" does not include operating a motor vehicle with or without the motor running when the operator has moved the vehicle to the side of or off the public highway and has halted in a location where the vehicle can safely and lawfully remain stationary.

(3) The prohibitions of this subsection shall not apply:

(A) To hands-free use.

(B) To activation or deactivation of hands-free use, as long as any accessory for securely mounting the device is not affixed to the windshield in violation of section 1125 of this title.

(C) When use of a portable electronic device is necessary for a person to communicate with law enforcement or emergency service personnel under emergency circumstances.

(D) To use of an ignition interlock device, as defined in section 1200 of this title.

(E) To use of a global positioning or navigation system if it is installed by the manufacturer or securely mounted in the vehicle in a manner that does not violate section 1125 of this title. As used in this subdivision (b)(3)(E), "securely mounted" means the device is placed in an accessory or location in the vehicle, other than the operator's hands, where the device will remain stationary under typical driving conditions

(c) Penalties.

(1) A person who violates this section commits a traffic violation and shall be subject to a fine of not less than \$100.00 and not more than \$200.00 for a first violation, and of not less than \$250.00 and not more than \$500.00 for a second or subsequent violation within any two-year period.

(2) A person convicted of violating this section while operating within a properly designated work zone in which construction, maintenance, or utility personnel are present shall have two points assessed against his or her driving record for a first conviction and five points assessed for a second or subsequent conviction.

(3) A person convicted of violating this section outside a work zone in which personnel are present shall not have points assessed against his or her driving record.

(d)(1) Operators of commercial motor vehicles shall be governed by the provisions of chapter 39 of this title (Commercial Driver License Act) instead of the provisions of this chapter with respect to the handheld use of mobile telephones and texting while operating a commercial motor vehicle.

(2) A person shall not be issued more than one complaint for any violation of this section, section 1095a of this title (junior operator use of portable electronic devices), or section 1099 of this title (texting prohibited) that arises from the same incident.

IV. Law Governing Commercial Motor Vehicles (enacted 2013)

23 V.S.A. § 4125

(a) Definitions. As used in this section, "driving" means operating a commercial motor vehicle on a public highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. "Driving" does not include operating a commercial motor vehicle with or without the motor running when the operator has moved the vehicle to the side of or off a highway and has halted in a location where the vehicle can safely remain stationary.

(b)(1) General Prohibition on Texting. No operator shall engage in texting while driving a commercial motor vehicle.

(2) Exception. Texting while driving is permissible by operators of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

(3) No person may be issued traffic complaints alleging a violation of this section and a violation of section 1099 of this title from the same incident.

(c)(1) General Prohibition on Use of Handheld Mobile Telephones. No operator shall use a handheld mobile telephone while driving a commercial motor vehicle.

(2) Exception. Use of a handheld mobile telephone is permissible by operators of a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

(d) Motor Carriers.

(1) A motor carrier shall not allow or require its drivers to engage in texting while driving a commercial motor vehicle.

(2) A motor carrier shall not allow or require its drivers to use a handheld mobile telephone while driving a commercial motor vehicle.

See also definitions at 23 V.S.A. § 4103

(22) "Mobile telephone" means a mobile communication device that falls under or uses any commercial mobile radio service, as defined under 47 C.F.R. § 20.3. "Mobile telephone" does not include two-way or Citizens Band Radio services.

(23) "Texting" means manually entering alphanumeric text into, or reading text from, an electronic device. "Texting" includes short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry, for present or future communication. "Texting" does not include:

(A) inputting, selecting, or reading information on a global positioning system or navigation system;

(B) pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(C) using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones, citizens band radios, and music players for a purpose that is not otherwise prohibited in this chapter.

(24) "Use a hand-held mobile telephone" means:

(A) using at least one hand to hold a mobile telephone to conduct a voice communication;

(B) dialing or answering a mobile telephone by pressing more than a single button; or

(C) reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position and restrained by a seat belt that is installed in accordance with 49 C.F.R. § 393.93 and adjusted in accordance with the vehicle manufacturer's instructions.

Distracted Driving Laws - Penalties

Law	Fine	Points/Suspension
Handheld ban for all persons, 23 V.S.A. § 1095b	<p><u>1st offense:</u> Not less than \$100 nor more than \$200.</p> <p><u>2d offense within 2 years:</u> Not less than \$250 nor more than \$500.</p> <p>Waiver penalties:</p> <ul style="list-style-type: none"> i. \$162 (1st offense, outside work zone) ii. \$392 (2d offense in 2 yrs, outside work zone) iii. \$230 (1st offense, work zone) iv. \$507 (2d offense, work zone) 	<p><u>1st offense:</u></p> <ul style="list-style-type: none"> (1) 2 points if in a work zone (2) 0 points if not in a work zone <p><u>2d offense:</u></p> <ul style="list-style-type: none"> (1) 5 points if in a work zone (2) 0 points if not in a work zone <p>→ For traffic violations, an adult operator who accumulates 10 points or more within a 2-year period is subject to a 10-day suspension, with increasing suspension times for each additional 5 points. → Operators under age 18 are subject to a 90-day recall after 6 points are accumulated.</p>
Texting ban, 23 V.S.A. § 1099	<p><u>1st offense:</u> Not less than \$100 nor more than \$200.</p> <p><u>2d offense within 2 years:</u> Not less than \$250 nor more than \$500.</p> <p>Waiver penalties:</p> <ul style="list-style-type: none"> i. \$230 (1st offense) ii. \$479 (2d offense) 	<p>5 points</p> <p>→ For traffic violations, an adult operator who accumulates 10 points or more within a 2-year period is subject to a 10-day suspension, with increasing suspension times for each additional 5 points. → Operators under age 18 are subject to a 30-day recall after one texting conviction and a 90-day recall after 6 points are accumulated, i.e. after 2 convictions.</p>
Junior operator use of portable electronic device, 23 V.S.A. § 1095a	<p>The fine is not specified in statute, so the maximum fine is \$1,000, plus surcharges.</p> <p>Waiver penalty: \$162.</p>	<p>2 points</p> <p>→ Operators under age 18 are subject to a 90-day recall after 6 points are accumulated, i.e. after 3 convictions.</p>
Texting or using a handheld mobile telephone while operating a commercial motor vehicle 23 V.S.A. § 4125	<p>The fine is not specified in statute, so the maximum fine is \$1,000, plus surcharges.</p> <p>Waiver penalty: \$479.</p>	<p>2 points</p> <p>→ In addition, texting or using a handheld mobile telephone while driving is a “serious traffic violation” under the CDL law. If combined with another “serious traffic violation”, 2 or more such violations within a 3-year period triggers a 60-day disqualification, and 3 or more such violations within a 3-year period triggers a 120-day disqualification from operating a commercial motor vehicle.</p>