



# Legislative Alert

## Commercial drivers and H 3276



**Immediate Release: February 5, 2025**

During the Subcommittee hearing on "SC Hands Free Act H 3276" testimony was given that there would be Federal funds withheld from South Carolina unless we change our current texting law to include hands free.

When asked by a representative if H 3276 would make our state in compliance the SCDMV representative giving testimony said "yes".

Below is an article from last year explaining some of the new regulations that the Federal government placed on commercial drivers and their companies. We have highlighted the parts that refer to the state laws.

We feel this has added the extra push for this bill to be passed.

### **Commercial driver cell phone laws October 21, 2024 American Family Insurance**

**Commercial driver cell phone laws** to understand and mitigate crashes associated with driver distraction, the U.S. Department of Transportation (DOT) has been studying the distracted driving issue with respect to both behavioral and vehicle safety countermeasures. Researchers classify distraction into various categories. When driving vehicles, distractions include:

- Visual (taking one's eyes off the road)
- Physical (taking one's hands off the wheel)
- Cognitive (thinking about something other than the road/driving)
- Auditory (listening to the radio or someone talking)

Data from studies indicate that both reaching for and dialing a mobile telephone increase the odds of a CMV driver's involvement in a safety-critical event, such as a crash, near-crash, or unintended lane departure. The odds of being involved in a safety-critical event are three times greater when the driver is reaching for an object than when the driver is not reaching for an object. The odds of being involved in a safety-critical event are six times greater while the driver is dialing a cell phone than when the driver is not dialing a cell phone. These increases in risk are primarily attributable to the driver's eyes being off the forward roadway.

In an effort to reduce the distracted driving problems caused by the use of hand-held mobile telephones, the Federal Motor Carrier Safety Administration (FMCSA) enacted regulations to limit their use while driving by drivers subject to the Federal Motor Carrier Safety Regulations (FMCSR) and, for those drivers required to have a Commercial Driver's License (CDL), **has added a disqualification penalty for CDL drivers who violate a state or local law or ordinance restricting or prohibiting the use of a hand-held mobile telephone while driving a Commercial Motor Vehicle.** This report summarizes the federal regulations, defines to whom they apply, and explains the penalties for violating the regulations.

**Cell phone prohibition definitions** the following definitions are needed to understand the FMCSA regulations that address mobile communications.

**Driving.** "Driving" is defined as operating a CMV, with the motor running, 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 driver 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.

**Mobile telephone.** A "mobile telephone" (e.g., cell phone) is defined as a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission, 47 CFR 20.3. It does not include two-way or Citizens Band Radio services.

**Use a hand-held mobile telephone.** "Use a hand-held mobile telephone" means: (1) using at least one hand to hold a mobile telephone to conduct a voice communication; (2) dialing or answering a mobile telephone by pressing more than a single button; or (3) reaching for a mobile telephone in a manner that requires a driver to



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maneuver so that he or she is no longer in a seated driving position and/or is not properly restrained by a seat belt.

**Hand-held mobile phones** The FMCSA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) amended the Federal Motor Carrier Safety Regulations (FMCSR) and the Hazardous Materials Regulations (HMR), respectively, to restrict the use of hand-held mobile telephones by drivers of CMVs. However, using a hand-held mobile telephone is permissible by drivers of a CMV when necessary to communicate with law enforcement officials or other emergency services.

School bus drivers employed by non-government entities and who transport children and/or school personnel between home and school in interstate commerce are also subject to the prohibition of hand-held mobile telephones. In addition, FMCSA is applying the regulation to drivers of small passenger-carrying vehicles (designed to transport 9 to 15 passengers) that are not receiving direct compensation and that are otherwise exempt from most of the FMCSR.

FMCSA also amended its regulations to implement new driver disqualification penalties for drivers of CMVs who fail to comply with this federal restriction and **new driver disqualification penalties for CDL holders who are convicted of violating a state or local law or ordinance that restricts the use of hand-held mobile telephones.** Additionally, motor carriers are prohibited from requiring or allowing drivers of CMVs to use hand-held mobile telephones where their use is not allowed.

The use of hand-held mobile telephones while driving is not allowed in nine states and the District of Columbia. While no state has completely banned mobile telephone use, some states have gone further than FMCSA's restrictive rule for certain categories of drivers. For example, 19 states and the District of Columbia prohibit the use of all mobile telephones while driving a school bus when passengers are present. At this time, the FMCSA does not believe there are sufficient data to justify banning hands-free mobile telephone use by drivers operating CMVs in interstate commerce.

**Hazardous materials transportation** The PHMSA states that a person transporting a quantity of hazardous materials requiring placarding under 49 CFR Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73 may not engage in, allow, or require use of a hand-held mobile telephone while driving. Thus, placarded hazardous materials transport in intrastate commerce would be regulated along with interstate commerce.

**Penalties for violating mobile communications regulations** The required number of convictions (not just for using hand-held mobile communications devices) to cause a disqualification and the period of disqualification are the same for both drivers that must comply with the FMCSR and drivers requiring a CDL license: 60 days for a second offense within three years and 120 days for three or more offenses within three years. In addition, the first and each subsequent violation of the regulations are subject to civil penalties imposed on the driver in an amount of up to \$2,750.

The regulations also state that motor carriers must not allow, nor require drivers to violate the regulations while driving. Employers may be subject to civil penalties in an amount up to \$11,000 if they violate these regulations.

In addition to the direct financial penalties, **the FMCSA also assigns a driver the worst rating (10) in the Driver Safety Management System (DSMS), used in the Comprehensive Safety Analysis (CSA) system, to interstate drivers who are convicted of violating federal, state, or jurisdictional bans on using a cell phone while driving (the equivalent penalty to Reckless Driving).** Violation severity weights reflect the relative importance of each violation. The Safety Management System data is evaluated to determine which motor carriers need intervention by the FMCSA; thus, a number of bad driver ratings would likely cause the FMCSA to contact and possibly visit a motor carrier to ensure that the motor carrier is providing adequate driver training and supervision.