

## READING & RESPONSE

### MAY 2007

#### Should driving while texting be a crime?

Sending and receiving text messages has joined talking on a cell phone as a dangerous distraction for drivers. State legislators are taking notice. *This article was reported and written by Christopher Cooper for The Wall Street Journal.*

By [The Wall Street Journal](#)

During the morning rush hour on Dec. 5, the 53-year-old driver of a blue Dodge Caravan was traveling north on Interstate 5 outside Seattle when he took his eyes off the road to scan an e-mail on his Blackberry, the State Patrol says. And that's how he hit the white Mazda, which clipped the green Honda, which rammed the black Toyota SUV before spinning into the other lane and plowing into a city bus.

Nobody was seriously hurt. But the episode sparked a chain reaction of a different sort in the Washington State Legislature in the form of a bill that would make it a crime to "operate a motor vehicle while reading, writing or sending electronic messages."

"I think just about everyone realizes that text messaging while driving should not be acceptable," says Joyce McDonald, the bill's sponsor. But the Republican member of the Washington House of Representatives also recognizes that people call it "CrackBerry" for a reason: She cheerfully admits she'd probably scan her own device on the drive to work "if I didn't need my reading glasses to see e-mail."

Forget DWI. The big new traffic-safety issue is DWT: Driving While Texting.

McDonald is joining a crowd of politicians seeking a crackdown. In Oregon, pending bills would provide fines -- up to \$720 in one of them -- for any driver caught texting or holding a cell phone to an ear. And in Arizona, a bill is pending that would make DWT a ticketable offense.

DWT is an extreme version of a whole new class of modern "distracted driving" issues lawmakers are wrestling with as electronic devices become an ever more important part of people's lives, in and out of their automobiles. Lawmakers are being encouraged by insurance companies like Allstate, which has added an e-mail fanatic to its stable of "mult-itasker" safe-driving ads. The campaign shows the "dedicated investor," who is balancing a Blackberry and the business section of a newspaper on the wheel while he navigates his sports car through stop-and-go traffic. (Another scene in the ad shows a driver changing his trousers while blazing down the highway).

Driving, while talking on cell phones, has gotten a great deal of legislative attention. Connecticut, New York, New Jersey, California and the District of Columbia outlaw the use of handheld phones while driving, and 38 states are currently considering 133 bills that would regulate their use behind the wheel, according to the National Conference of State Legislatures.

Some wireless-industry supporters argue that statutes barring texting while driving are too specific. What is needed, they say, is not narrowly focused legislation, but a campaign to educate the public about all driver

distractions. In Washington, D.C., an industry lobby group called CTIA -- The Wireless Association has begun tracking legislation, including McDonald's bill, and scratching out a strategy to counter it.

"I don't think you'd find anyone who would say that trying to text and drive is not reckless behavior," says Joe Farren, spokesman for the group. "If you're being reckless, you should get a ticket." He adds that his group has taken no formal position on text-message bills such as McDonald's.

### **Reading and typing in traffic**

Few driver distractions seem quite as frighteningly intrusive as attempting to read and type messages while weaving in traffic. The first reported incident of DWT may have been in Tennessee in 2005, when a man died while texting when he lost control of his pickup and plunged down an embankment. In Colorado that same year, a teenager served 10 days in jail after he struck and killed a bicyclist while texting a friend.

A study conducted by Nationwide Mutual Insurance that was released this year found that 19% of all drivers -- and 37% of drivers between the ages of 18 and 27 -- text message behind the wheel. DWT seems particularly common among kids. McDonald first considered her ban last October, after she visited a high school and a group of students showed her how to send text messages by cell phone. "They were sending messages secretly while they were sitting in class," she says. "It wasn't long before it dawned on me that they were also texting while they were driving."

The discovery enabled McDonald to find a quick cosponsor across the aisle in Democrat Dawn Morrell, who said she had seen her campaign manager texting behind the wheel. "Imagine these kids driving along while they're breaking up with their boyfriends or whatever," Morrell says. "We laugh but it's scary."

At a recent hearing on the bill, McDonald and others testified before a largely impassive group of House Transportation Committee members. The legislature has turned down cell phone legislation eight years straight. But this time, it passed McDonald's bill. Many legislators seemed keen to enact some restrictions. One representative, Larry Seaquist, referred in the hearing to a bill that would "phase out" handheld wireless devices among drivers as "The Save My Wife's Life Act."

### **Lobbyists swing into action**

Sprint Nextel, which opposes legislation that would limit wireless devices in cars, had a lobbyist that day in Olympia, Washington's capital. Sprint says curbing abuse is best handled through education and should focus on the full spectrum of driver distractions. The company has begun distributing a series of four posters to high schools around the country that highlight this strategy. One of the posters shows a burger and fries, while the others show a tube of mascara, a compact disc and a silver flip-top phone. The caption on the phone poster reads: "Cell Phone 4oz. Car 2,800 lbs. Taking the wheel is a ton of responsibility."

Few opponents argue that driving and texting -- any more than driving and drinking -- is a good idea. Instead, opponents focus on the dearth of statistics showing that wireless devices cause crashes. Indeed, there are few data suggesting that texting causes more wrecks than, say, fast food. A study conducted by the state of Washington in 2006 blamed "driver distractions" for 7.5% of the 50,000 reported accidents during the first nine months of that year. Of that number, the study said distractions prompted by "operating a handheld communications device," including text messaging, came in fifth, statistically in line with the grab-bag category of "driver interacting with passengers, animals or objects."

But police in Washington say not a day passes when they don't see a case of DWT, and that the statistics may not reflect the extent of the problem. Many wrecks have an undetermined cause, and DWT data rely on driver honesty. Current state law gives drivers little incentive to blab. The reward for honesty is a ticket for negligent operation of a vehicle, which draws a flat \$538 fine.

The only way to independently determine whether the devices were in use is cumbersome. Police would have to get a warrant to subpoena billing records. But it would be hard to talk a judge into granting such subpoenas for a fender bender.

Trooper Jeff Merrill says the driver of the Dodge Caravan on Dec. 5 would almost certainly have gotten away with his carelessness had he not confessed. "He's been very upfront about it," Merrill says.

Merrill says the biggest problem with McDonald's legislation may be its enforceability. Though McDonald says more than 80% of her constituents who text behind the wheel would probably knock it off if the practice were outlawed, Merrill is skeptical.

"Hey, we've all done it one time or another, and I think people will continue to do it," Merrill says. "But if you're going to do it, you better be careful."

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“Kelly’s Korner”

*OIADA Oregon Dealer News*

May 2007

### **Record Retention By Jan Kelly**

Recently, I was asked about the length of time a dealership is required to retain the credit application obtained from a customer on a deal that was never completed (otherwise known as a “dead deal”). My reply: It depends on the regulation to which you refer.

If a credit application becomes a deal, the dealership needs to keep the file for seven years or until the contract expires (whichever period of time is longer).

If the credit application never becomes a deal, pursuant to Regulation B we must retain the application for 25 months post adverse action notice for an individual and 12 months for a business.

Additionally, we have the OFAC ruling, which has a five-year records retention provision. If you check this by electronic means using a company such as First Advantage CREDCO, PatriotDealer.com, or Bridger Systems at OFACcompliance.com, all of these companies will save your inquiries electronically for five years so you will be in compliance with OFAC regulations.

I realize this can be confusing. Here are my two cent's worth: I recommend retaining the files for five years; then, shred the credit application and have the clippings disposed of in such a manner that you are in compliance with the Disposal rule. As always, records and all of your customers' non-published information should be retained in a secured environment following your own safeguard procedures.

This commentary is not meant as legal advice but simply as an informational report. Please consult with your dealership's legal counsel for additional details. If you need a copy of Regulation B, please contact my office and I will be glad to provide you with a copy.

*Article written by: Jan Kelly, President of Kelly Enterprises. She is a sales trainer and consultant, convention speaker, and writes frequently for industry publications. For information about training opportunities telephone 800.336.4275 or contact Kelly Enterprises at [www.JLKelly.com](http://www.JLKelly.com).*

### **Kelly Enterprises F&I Training Calendar**

#### 4-Day F&I Seminar Schedule

May 8-11	Minneapolis, MN
July 24-27	Baltimore, MD
October 23-26	Portland, OR
November 6-9	Dallas, TX

#### 2-Day Advanced F&I Seminar Schedule

June 7-8	Portland, OR
August 9-10	Portland, OR
September 13-14	Kansas City, MO
December 13-14	Portland, OR

## ***Information Worth Repeating***

# **Prompt Action Vital For Canceled Bond**

Vehicle dealers now have a 45-day grace period to reinstate a dealer license that was canceled because of bond or liability insurance coverage. Yet dealers in that situation still need to act quickly to avoid costly consequences.

A dealer who received a Notice of Cancellation from DMV's Business License Unit that is related to bond or liability insurance coverage first must read it carefully. ***It is the dealer's responsibility*** as the licensee to ensure that a new bond or insurance certificate is **received** by the Business License Unit **within 45 calendar days** of the date of cancellation or expiration.

If the new bond or insurance is not received by the Business License Unit by the end of the 45<sup>th</sup> business day, then DMV cannot by law reinstate a certificate. The dealer must reapply as a new applicant; the law allows no exceptions.

Filing a new application requires paying for the full three-year license and dealer plates, obtaining the required education and getting location approval from the city or county.

**Dealers should not assume that the bond or insurance provider has given the Business License Unit the proof of required coverage.** A little follow-through early in the process can avoid a lot of work and expense, the Business License Unit advises.

Often DMV learns that the insurance or bond was obtained by the dealer before the deadline, but that the insurer did not send the forms to DMV or that they were lost in the mail. Yet the law leaves no room for error. The properly completed state insurance or bond forms must be in the physical possession of the Business License Unit in order for DMV to reinstate a license within the 45-day grace period.

The Business License Unit must have the original bond form. A faxed copy of the liability insurance form also is acceptable, but only if faxed from the insurer.

The Business License Unit recommends that the dealer contact the unit at 503-945-5052 to verify receipt of the forms well before the 45<sup>th</sup> day. Dealers and the public also can check the status of dealer certificates by visiting the DMV Web site at [www.OregonDMV.com](http://www.OregonDMV.com).

The 45-day grace period became law in 2004 in recognition of problems dealers sometimes experienced in obtaining bond or insurance coverage. The change has allowed dealers to reinstate a canceled certificate within the 45-day period, rather than force them to reapply as new dealers.

However, the grace period does not allow dealer activities until the certificate has been reinstated—another reason that prompt follow-through is vital to business. Continuing dealer activities while a certificate is in a canceled status may lead to civil penalties for acting as an unlicensed dealer.

*Rick Parsons, Investigations DMV  
Dealer Details Summer 2005*

## **“DEALERS Helping DEALERS”**

This is a new column we will feature monthly in the “Oregon Dealer News.” We want dealers to provide ideas or tips that help them or their employees to be more successful in their business or personal lives. We encourage every dealer to send in their ideas, and we will print as many as space permits each month.

### - Radio Advertising

By Al Hutchinson - Corvallis

What radio stations are your customers listening to? Selecting the proper mix of different radio stations, to reach your target audience, is at best, an inexact science. How can you make it more accurate for you and your market? Try the following: When you are selecting your radio station mix, radio sales people will show you something like an Arbitron Survey (shows each stations market share). But these surveys can be hyped by promotions during the rating period (daily giveaways, cash prizes and treasure hunts with daily clues) to give them a temporary market share jump. So they are not always accurate.

So, I decided to sample my own customers. I would go out into my service department and sit in each customer’s car, and turn on the radio, and see what station it was set to, and note that. I would do this in the morning and afternoon, (as we were doing 22 repair orders per day) so I accumulated a lot of data quickly. If you do not have a service department, try this: while doing a trade-in evaluation, the person doing it would normally turn on the radio to see if it works; have them note what station it is set to. Accumulate your data, and you will have a very good idea of how to allocate your radio dollars. More bang for the buck for your marketing.

### - Community Service

Want to increase your sales? Get involved civically. Join Rotary, Lyons, Kiwanis, or volunteer for City or County Boards. Give back to the community that helps make you successful. You will become better known, and people like to buy cars from their friends. You will get out of it, what you put into it. I joined a Rotary club in Corvallis in 1980. Our club has 120 members. I have served on many committees, as well as Club President. I have had perfect attendance for over 25 Years. I am a committed Rotarian, enjoy the work our club does and have made many new friends. I even met my significant other there.

Something I did not expect was how it has helped my business. Each month we average three plus sales to people or business owners in the club, and either buy or consign two plus vehicles from club members. So we can directly track five or more transactions each month from the Rotary connection.

If you join a club, you must get involved. If you use it only as a place to go to lunch once a week, and don’t really contribute, you are wasting your time. Joining a service club is very rewarding personally, especially when you see what your efforts can do to help those less fortunate.

Al Hutchinson – Corvallis

**Dealer Alert: by OADA**

It has come to our attention that several dealerships are currently experiencing IRS 8300 audits. Please take a moment to make sure your documents are in order.

Dealers must file IRS FORM 8300 to report cash paid in the sale of a vehicle with 15 days of the date of payment if all of the following apply:

- The Dealer receives cash over \$10,000;
- The Dealer receives it in the course of your trade or business;
- The Dealer receives it in one lump sum or in several payments within one year;
- The Dealer receives it from the same buyer or agent; and
- The Dealer receives it in a single transaction or in related transactions.

Alternative Cash Payments: in addition to coins and currency, cash includes specified monetary instruments (cashier's checks, money orders, bank drafts and travelers' checks), even if their face value is less than \$10,000 if they are received in a designated reporting transaction. The exception to this class of payment is when a lending institution issues one of these monetary instruments as a dispersal to your dealership as proceeds from a loan.

Non Cash Payments: Certain monetary instruments are not regarded as cash. These are: personal/business checks, certified personal/business checks.

Obtaining Forms: IRS FORM 8300 with instructions can be obtained through any IRS office or at [www.irs.gov](http://www.irs.gov).

**NOTE: Thank you to Greg Remensperger of OADA for sharing this with us. You could be the next dealership to be audited. Take time to take a look through your paperwork.**

## Time for a visit to the Dentist's office

By: Darrell Fuller

It is fairly common knowledge that few people enjoy visiting their Dentist. Even people with good oral hygiene don't particularly like making an appointment to see someone whose job it is to pry and poke and jab our gums and teeth with sharp metal objects.

Yet, we go because it is good for us.

Well, the Legislature is in town. Lawmakers from across the state are collected in the Capitol building to make new laws and craft Oregon's two-year budget. There aren't many ordinary people truly excited about politicians making new laws, but it happens every two years because, we hope, it is good for us. Or so they say.

This year, the politicians have agreed that their work is so important that they will now start meeting every year instead of every other year. In other words, we're doubling our visits to the Dentist's office.

The big difference between the Dentist and the Legislature is that Dentists do actually help us stay healthy. The jury is still out on the Legislature. Based on some of the bills being introduced this session, many Oregon businesses will have a renewed fear of this proverbial Dentist's chair.

Here is a run down of some of the bills which will impact auto dealers. By listing them, it is not my intent to suggest that each and every one will become law. Many won't. But the mere fact that they have been printed means they potentially could become law.

One of the most important responsibilities of OIADA is to represent independent auto dealers at the Capitol in Salem. You can be certain that we are working hard to ensure that bad bills don't become law.

**Senate Bill 40** (Sponsored by Senators Richard Devlin and Alan Bates). Prohibits operation of all-terrain vehicles by persons under 12 years of age. Makes other related changes to the sale and use of all-terrain vehicles. There are numerous other bills which also regulate all-terrain vehicles.

**Senate Bill 385** (Sponsored by Senator Vicki Walker). Requires motor trucks weighing 26,000 pounds or less and used for commercial delivery of packages and property to be equipped with forward crossview mirrors.

**Senate Bill 484** (Sponsored by the Senate Committee on Commerce). Prohibits the use of mandatory binding arbitration in contracts for the sale of real estate, goods (such as motor vehicles) or services. Makes violations an unlawful trade practice.

**Senate Bill 538** (Sponsored by Senator Vicki Walker). Provides all motor vehicle purchasers with an unrestricted three day right of rescission on any purchase.

**Senate Bill 583** (Sponsored by Senator Floyd Prozanski) Omnibus identity theft bill which includes a right for all consumer to freeze their credit.

**House Bill 2272** (Sponsored by Department of Transportation). Requires vehicles to comply with California tailpipe emissions standards to be registered in Oregon. Provides some exceptions.

**House Bill 2394** (Sponsored by Representative Sal Esquivel). Requires certification of vehicle salespersons. Requires ODOT to provide vehicle salesperson education program.

**House Bill 2435** (Sponsored by Representatives Bill Garrard and Mike Schaufler). Establishes for types of vehicle appraiser certificates.

**House Bill 2438** (Sponsored by Representatives Bill Garrard and Mike Schaufler). Removes some of the required information on the notice to a buyer that the vehicle they are purchasing is on consignment.

**House Bill 2496** (Sponsored by the House Committee on Transportation). Adds a new \$100 fee on the title transfer of any motor vehicle not having a current Oregon title (MSOs and out-of-state vehicles).

**House Bill 2512** (Sponsored by Representatives Bill Garrard and Mike Schaufler). Permits only employees of a licensed dealer to make purchases at “dealer only” auto auctions. Permits out-of-state dealers to buy and sell vehicles at auto auctions.

**House Bill 2941** (Sponsored by the House Committee on Business and Labor). Requires financing on a spot-delivered vehicle to be accepted by a lender within 14 days or the purchase agreement is void.

**House Bill 2983** (Sponsored by Representative Brian Clem). Provides person between 18 and 20 years of age with a three day right of rescission on vehicle purchases. Creates new notice requirements for purchase agreements with a person between the ages of 18 and 20 years.

**House Bill 3386** (Sponsored by the House Committee on Business and Labor). Requires person offering for sale vehicle protection product with warranty to make certain disclosures to consumers.

It was Mark Twain who said, “No man’s life, liberty, or property are safe while the legislature is in session.” It was true in 1866 when he said it. It is true today. OIADA is working very hard to protect your bottom line by supporting good legislation and opposing bad legislation. If you have a good relationship with you local legislator, please let us know. If you have any questions about any of the bills listed above, please call the OIADA office at 503-362-6839 or 800-447-0302.



## ***POWER SPORTS CORNER***

*By Gary W. Sargent*

**FYI: An ATV in Oregon is any vehicle that can go off-road, including those with two, three and four wheels. All ATV bills apply to all of them.**

As the song goes "THEM TIMES ARE A CHANGEN." The threat of Senate Bill 49 -- a bill that would prohibit anyone under the age of 12 years from riding a two, three or four wheel ATV -- becoming a reality to the power sports industry has jumpstarted a grass roots opposition movement, resulting in a demonstration of peaceful strength, organized unity, and total opposition of SB 49 on the state Capitol's front steps recently.

As an OIADA Legislative Committee member I was there, lending OIADA support in total opposition of SB 49 by publicly speaking our position to all that gathered.

The solution to all stakeholder's concerns on ATV safety may be found in a compromise on amendments to Senate Bill 101. Over Spring Break, a forum was held in Florence, OR with State Parks Representatives, Concerned Citizens, Dealers, and Association Leaders to work out a compromise and craft amendments to Senate Bill 101 that are palatable to all concerned. The meeting was very productive.

**THE FORUM'S SB 101 AMENDMENT RECOMMENDATIONS ARE AS FOLLOWS:**

- 1. "LANDS OPEN TO THE PUBLIC" CHANGED TO "ON PUBLIC LANDS". OTHERWISE, ALL PRIVATE TRACKS WOULD FACE NEW REGULATIONS. STATE PARKS SHOULD NOT BE REGULATING ACTIVITIES AT PRIVATE TRACKS.**
- 2. USE A RIDER FIT FORMULA, INSTEAD OF A MINIMUM AGE AND ENGINE CC SIZE, FOR RIDERS UNDER THE AGE OF 16.**
- 3. PARENTAL GUIDANCE WITH THE UNAIDED EYE AND ABLE TO COME TO THE IMMEDIATE AID OF CHILDREN UNDER THE AGE OF 16. THE BIGGEST PROBLEM WITH INJURY AND DEATH TO CHILDREN COMES FROM A LACK OF PARENTAL SUPERVISION, NOT THE SIZE OF THE VEHICLE BEING RIDDEN.**
- 4. REQUIRED RIDER TRAINING PROGRAM.**

**(Follow-up outcome on these recommendations was not available at press time)**

**READING & RESPONSE FORM  
OIADA CONTINUING EDUCATION PROGRAM**

**Complete this test or the Certificate of Completion form for May 2007**

<b>ARTICLE:</b>	<b>QUESTION</b>
Hecht & Hecht	There are currently 38 states considering 133 bills that would regulate the use of handheld phones behind the wheel (1) True _____ False _____
Canceled Bond	It is the dealer's responsibility to ensure that a new bond or insurance certificate is received by the Business License Unit within 45 calendar days of the date of cancellation or expiration. (2) True _____ False _____
Record Retention	If a credit application never becomes a deal, pursuant to Regulation B you must Retain the application for 12 months post adverse notice for an individual and 25 months for a business. (3) True _____ False _____
Dealers Helping. . .	In addition to coins and currency, cash includes specified monetary instruments (cashier's checks, money orders, bank drafts and travelers' checks), even if their face value is less than \$10,000 if they are received in a designated reporting transaction. (4) True _____ False _____
Record Retention	If a credit application becomes a deal, the dealership needs to keep the file for seven years or until the contract expires (whichever period of time is longer). (5) True _____ False _____
Visit to the Dentist	OIADA is working very hard to protect your bottom line by supporting good legislation and opposing bad legislation. (6) True _____ False _____
Power Sports	SB 49 would prohibit anyone under the age of 12 years from riding a 2, 3 or 4 wheel ATV. (7) True _____ False _____

for May 2007 Continuing Education Packet # 5-07

**Now Drop Down and See How You Did !**

# READING & RESPONSE FORM

## OIADA CONTINUING EDUCATION PROGRAM

**Complete this test or the Certificate of Completion form for May 2007**

ARTICLE:	QUESTION
Hecht & Hecht	There are currently 38 states considering 133 bills that would regulate the use of handheld phones behind the wheel (1) True <input checked="" type="checkbox"/> False <input type="checkbox"/>
Canceled Bond	It is the dealer's responsibility to ensure that a new bond or insurance certificate is received by the Business License Unit within 45 calendar days of the date of cancellation or expiration. (2) True <input checked="" type="checkbox"/> False <input type="checkbox"/>
Record Retention	If a credit application never becomes a deal, pursuant to Regulation B you must Retain the application for 12 months post adverse notice for an individual and 25 months for a business. (3) True <input type="checkbox"/> False <input checked="" type="checkbox"/>
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Power Sports	SB 49 would prohibit anyone under the age of 12 years from riding a 2, 3 or 4 wheel ATV. (7) True <input checked="" type="checkbox"/> False <input type="checkbox"/>

**for May 2007 Continuing Education Packet # 5-07**

My Name \_\_\_\_\_ (printed)  
Dealership Name \_\_\_\_\_ Dealership # \_\_\_\_\_  
Dealer License Expiration Date:(Month) \_\_\_\_\_ Year) \_\_\_\_\_  
Signed: \_\_\_\_\_ Date \_\_\_\_\_

**FAX TO: 503-364-7331 or mail to OIADA, 1475 Capitol St NE, Salem, Oregon 97301**