

California cellphone law may be more costly than the \$20 fine

If there's a fatal car accident, a violator of the hand-held ban could face a felony charge, some experts say.

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The threat of a \$20 fine may not sway every California driver from using a hand-held cellphone when a state ban takes effect July 1, but a motorist who ignores the law and causes an accident could face huge civil judgments or even jail if fatalities result.

"If you cause a fatal accident and you are running a stop sign, speeding or crossing a double line, any additional violation would add to the possibility a manslaughter charge could be filed," said W. Scott Thorpe, chief executive of the California District Attorneys Assn. "It all goes to state of mind and your recklessness."

The cellphone law is moving the state into uncharted territory. Though other states have enacted such laws, prosecutors, trial lawyers and insurance companies say it is still too soon to measure the effects.

California already has been more aggressive than some states in prosecuting drivers for causing fatal accidents, even when they are not impaired by drugs or alcohol. Dozens of vehicular manslaughter cases in Los Angeles County alone are brought annually against sober drivers whose conduct is negligent, prosecutors say.

A cellphone violation during a fatal car accident may not be enough to bring a felony charge, but it could trigger a misdemeanor manslaughter charge, Thorpe said. Conviction on those charges can carry up to a year in jail for each death.

But other experts predict some even tougher outcomes.

"If somebody kills three kids in an intersection and they were on a cellphone at the time, I can see the driver being charged with a felony," said Stanley A. Goldman, a law professor at Loyola Law School in Los Angeles. "Don't studies show that people are just as dangerous talking on a cellphone as they are drinking?"

Tom Higgins, a supervisor for criminal prosecutions in the Los Angeles County district attorney's office, views cellphone use as clearly negligent behavior.

"It is a distraction issue," Higgins said. "It is negligent, not necessarily because it is a state law. Most statutes are set up to help us not be negligent."

A fairly widespread disgust has spread against driving and talking.

"I was rear-ended last year, and sure enough the driver behind me had a cellphone in her hand," said Craig Datig, an expert in California vehicular manslaughter cases who was a prosecutor in Riverside County for 24 years. "Now that it is illegal, proving negligence will be easier."

A predictable effect of the new law could be in civil cases, in which juries have already returned huge verdicts involving cellphone use. In 2003, a Palmdale jury stunned the legal community with a \$7.3-million verdict in a nonfatal case brought by a motorist who was struck by a teenager who was allegedly talking on a cellphone. The case was later settled, reportedly for about \$6 million.

In the past, a plaintiff had to prove that the use of a cellphone by a driver who caused an accident was negligent behavior. With the new ban, a judge can instruct a jury that it must find defendants negligent if they used a hand-held cellphone, said Lawrence P. Grassini, a veteran civil attorney.

"It gives the plaintiff a boost, because the jury has to find negligence," Grassini said. "Then the question becomes whether the cellphone use contributed to the accident."

Insurance industry attorneys agree about their clients' increased exposure.

"Violations of a safety law would be powerful evidence of liability," said David Snyder, vice president and assistant general counsel of the American Insurance Assn. "You could draw an analogy to drunk-driving laws or the speed limit."

Insurers would still cover losses, unless future policies exclude drivers using hand-held cellphones, Snyder said. Afterward, they will be greeted with sharply higher insurance rates, he said.

Michael Maguire, a State Farm attorney in Southern California, said the law could lead jurors to give out more awards and higher damages, even though they are supposed to compensate accident victims only for their actual costs, such as medical care and lost income.

"A jury should not be punishing somebody for a negligent act. That's what punitive damages are for," Maguire said.

It's doubtful, Maguire said, that cellphone use rises up to California's tough standard for awarding punitive damages, which includes conduct that is "so despicable that it would offend the common decency of society." But juries can be unpredictable.

"If the jurors are upset, they give more money," Maguire said.

New York is one of the states that has preceded California in banning drivers from using hand-held cellphones. But experts say the effect on civil and criminal liability there is largely unknown. Spokesmen for several district attorneys, police and the bar association in New York could not say whether additional civil or criminal cases have grown out of the state's law.

Columbia University law professor Suzanne B. Goldberg said she had not seen any law journal articles on the issue. Most civil cases are settled out of court and most courts do not keep good statistical records of prosecutions, so the effect of New York's statute is largely unknown, she said.

Anne McCartt, vice president for research at the Insurance Institute for Highway Safety, said the institute has long asserted that drivers are less safe using any kind of cellphone, including hands-free sets that will still be legal after July 1.

"We think the evidence would support a law that bans any kind of cellphone use," she said.

The big question in California is whether the law will change any behavior.

The law slaps violators caught by police with a \$20 base fine for the first offense, though with court assessments and fees, even that amount would increase to nearly \$100 in some jurisdictions, including L.A. County.

McCartt said studies of drunk drivers have shown that many were more concerned with their risk of getting caught than the potential penalty.

But Goldman, of Loyola Law School, said the risk of liability would be enough to change his habits starting July 1. When a reporter called him on his cellphone, Goldman parked his car to complete the interview.

"I know I am not going to do it," Goldman said.