

SUBJECT: Prohibiting texting while driving

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Pickett

1 nay — Lavender

4 absent — Y. Davis, Harper-Brown, McClendon, Riddle

WITNESSES: For — Willie Barber, American Council of the Blind of Texas; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Larry Johnson, Alamo Council for the Blind; F. Paul Lassalle, Houston Police Department; Brooke Mabry; Theodore Spinks, Texas Medical Association; Krista Tankersley; Shannon Teague; John Ulczycki, National Safety Council; Jennifer Zamora-Jamison, Decide2Drive.org; (*Registered, but did not testify*: Chase Bearden, Coalition of Texans with Disabilities; Andrea Chavez, Centerpoint Energy; Velma Cruz, Sprint Nextel; Jim Dow, Pioneer Natural Resources; Les Findeisen, Texas Motor Transportation Association; Frank Galitski, Farmers Insurance; Bo Gilbert, United Services Automobile Association; Jonna Kay Hamilton, Nationwide Insurance; Chris Hosek; Shanna Igo, Texas Municipal League; Dennis Kearns, Texas Railroad Association; Richard Lawson, Verizon; Myra Leo, Alliance of Automobile Manufacturers; Paul Martin, National Association of Mutual Insurance Companies; Carol McGarah, General Motors; Donald McKinney, Houston Police Department; Chris Miller, Association of Electric Companies of Texas, Inc.; Julie Nelson, The BG Group; Anne O’Ryan, AAA Texas; Thomas Ratliff, T-Mobile USA; Rebekah Schroeder, Texas Children’s Hospital; Bryan Sperry, Children’s Hospital Association of Texas; Mark Stine, BikeTexas; Steven Tays, Bexar County District Attorney’s Office; Randy Teakell, AT&T; Joe Woods, Property Casualty Insurers Association of America)

Against — Terri Hall, Texas TURF

On — (*Registered, but did not testify*: John Barton, Texas Department of Transportation)

**BACKGROUND:** Transportation Code, sec. 545.425 defines a “wireless communication device” as a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332. This term includes cell phones.

A driver of any age may not use a wireless communication device in a school crossing zone unless the vehicle is stopped or the driver uses a hands-free device. A political subdivision must post at the entrance to each school crossing zone a sign informing drivers that use of a wireless communication device within the zone is prohibited and can result in a fine.

A bus driver with a minor on board may not use a wireless communication device unless the vehicle is stopped. It is an affirmative defense to prosecution if the device is being used to make an emergency call.

Transportation Code, sec. 545.424 prohibits drivers under the age of 18 from using a wireless communication device except in an emergency. Drivers under the age of 17 who hold a restricted motorcycle license or moped license may not use a wireless communication device while driving a motorcycle or moped.

**DIGEST:** CSHB 63 would make it a misdemeanor offense for a driver to use a handheld wireless communication device to read, write, or send a text, instant message, e-mail, or other text-based communication while driving, except while the vehicle was stopped.

The first offense would be punishable by a fine up to \$100 and a second or subsequent offense by a fine up to \$200. These penalties also would apply to the existing offenses of using a wireless communication device while driving for those under the age of 18 and using a wireless communication device while driving a motorcycle or moped with a restricted motorcycle or moped license for those under the age of 17.

It would be a defense to prosecution if the driver used a handheld wireless communication device to:

- look up a number or name to make a phone call;
- use voice operation, push-to-talk, or a hands-free device;
- use a global positioning system (GPS);
- report illegal activity or summon emergency help; or
- relay information between a driver and a dispatcher as part of their jobs, as long as the device was affixed to the vehicle.

The offense would not apply to drivers of authorized emergency or law enforcement vehicles who were acting in an official capacity or drivers licensed by the Federal Communications Commission who were operating a radio frequency device such as a ham radio.

CSHB 63 would preempt all local ordinances, rules or regulations relating to using a wireless communication device to read, write, or send a text-based communication while driving.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 63 would improve public safety by prohibiting drivers from texting, instant messaging, or e-mailing while their vehicle was moving. This would send a clear, easily enforceable message that texting while driving is dangerous, costly, and affects everyone on the road.

The bill would reduce texting-related crashes, fatalities and injuries, potentially saving lives. Thirty-nine U.S. states and the District of Columbia have enacted bans on texting while driving, and studies have shown that such laws have reduced crashes when coupled with enforcement and education. Texting while driving has injured and killed drivers, passengers, and innocent bystanders, costing Texas an estimated \$684 million in 2011 based on national accident loss statistics.

To improve safety, the Legislature has passed laws requiring drivers to hold a license, have proof of auto insurance and inspection, and wear a seat belt. CSHB 63 is similar common-sense legislation that would increase safety for everyone on the road, including children, bicyclists, and those who are blind or have disabilities that could put them in harm's way with distracted drivers. Texting while driving bans are widely supported — 96 percent of people nationwide favor a ban on texting while driving.

While there are other forms of distracted driving, texting is one of the most dangerous forms, as it takes drivers' attention off the road and their hands off the wheel. By contrast, a driver could watch the road while talking to a passenger, and both could adjust the flow of conversation according to road conditions. A motorist who is texting takes his or her eyes off the road for an average of 4.6 seconds, the equivalent of driving the distance of a football field at 55 miles per hour. Studies show texting while driving is about six times more dangerous than intoxicated driving.

A driver who texts is eight to 23 times more likely to crash than a driver who is not texting.

The bill would give officers an additional tool to improve road safety for all Texans. Officers could enforce the bill by visually identifying texting drivers. Even if drivers held their phones under the dashboard, officers could see that a driver was looking down, slowing down, or that the light from the phone was shining on drivers' faces when they texted at night.

A statewide law combined with education and enforcement would be more effective than education alone. Statistics on seat belt use showed that Texans do what the law asks, but compliance does not happen overnight. When Texas passed the primary seat belt law in 1985, 15 percent of Texans used a seat belt. One year later seat belt use rose to nearly 67 percent, and the rate increased to nearly 94 percent in 2012, bolstered by education and stepped-up enforcement. While seat belt laws affect only the person wearing the belt, CSHB 63 would increase the safety of everyone on the road.

Across Texas, more than two dozen cities have passed laws regulating texting while driving, creating a patchwork that makes it difficult to follow the law, especially as drivers travel between jurisdictions. A uniform state law would be easier to understand and follow and would cover unincorporated areas that otherwise have no way to adopt a local ban.

In addition, by imposing fines, the bill would allow the state to apply for federal grant funding to support the bill's enforcement under the Moving Ahead for Progress in the 21st Century (MAP-21) Act.

**OPPONENTS  
SAY:**

CSHB 63 would be an unnecessary government effort to micromanage the behavior of adults. Increased information and education about the dangers of texting while driving would be a better solution than criminalizing the behavior.

Adults should be trusted to monitor their own behavior in the privacy of their vehicles. Current law already prohibits drivers under the age of 18 from texting or using a cell phone while driving and prohibits all drivers from using a wireless communication device in a school crossing zone unless the vehicle is stopped or the driver uses a hands-free device.

While well intentioned, CSHB 63 could detrimentally affect public safety.

One study found auto insurance claims increased in some states after a texting ban because drivers lowered cell phones to their laps to hide their texting, creating an even more hazardous driving situation.

A texting ban would be difficult to enforce, as law enforcement would not be able to identify the difference between a texting driver and a driver who was using a phone for another purpose. Law enforcement would not be able to identify texting at all if drivers lowered their phones to their laps. A ban also would unfairly burden drivers who were not texting, requiring them to prove they were using their phone for a purpose other than reading, writing, or sending a message.

CSHB 63 would single out texting from among many types of potential distractions while driving. Drivers are distracted by conversation, eating, grooming, and many other activities that decrease awareness and distract from safe driving.

The key to dissuading drivers from texting while driving is providing information and education about the dangers. Instead of implementing an ineffective government ban on texting while driving, a more successful initiative would include information in driving safety and driver's education courses, public service ads, and announcements.

OTHER  
OPPONENTS  
SAY:

A statewide law banning texting while driving could reduce or eliminate the ability of local governments to enact legislation specific to their unique needs. Although texting while driving may be a significant public safety concern in some cities, it may not be in others. Likewise, the bill would prevent municipalities from enacting stronger laws on texting while driving as they saw fit.

NOTES:

The companion bill, SB 28 by Zaffirini, was referred to the Senate Transportation Committee on January 28.

The committee substitute differs from the bill as filed by:

- adding a fine for the offense of reading, writing, or sending a text-based communication while driving;
- adding a penalty for the offense of using a wireless communication device while driving for drivers under the age of 18 and drivers under the age of 17 who hold a restricted motorcycle license or moped license;

- including drivers using a wireless communication device to report illegal activity or summon emergency help among those to whom a defense to prosecution would apply;
- removing a provision to allow localities to adopt a more stringent ordinance, rule, or regulation on texting while driving;
- removing citizens band (CB) radios and commercial two-way radio communication devices from the definition of “handheld wireless communication device.”