

SUBJECT: Prohibiting texting while driving; creating an offense, penalty

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Pickett, Martinez, Burkett, Y. Davis, Fletcher, Israel, Murr, Paddie, Phillips

0 nays

3 absent — Harless, McClendon, Simmons

WITNESSES: For — Chase Bearden, Coalition of Texans with Disabilities; Jessica Anderson, Houston Police Department; AJ Louderback, Sheriffs Association of Texas; Robin Garza, TETAF; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Warren Diepraam, Waller County District Attorney's Office; Steven Abrams; Troy Abrams; Jeanne Brown; Sierra Myers; Krista Tankersley; (*Registered, but did not testify:* Anne O'Ryan, AAA Texas; John Marlow, ACE Group; John Fainter, AECT; Billy Phenix, Allstate Insurance Company; Jo Cassandra Cuevas, AT&T; Robin Stallings, BikeTexas; Teresa Devine, Blue Cross and Blue Shield of Texas; Jeff Bonham, CenterPoint Energy; Bryan Sperry, Children's Hospital Association of Texas; Vicki Perkins, CHRISTUS Health; Lindsay Lanagan, City of Houston; Marc Rodriguez, City of San Antonio; Melinda Smith, CLEAT, the Combined Law Enforcement Associations of Texas; Daniel Womack, the Dow Chemical Company; Brian Yarbrough, EAN Holdings LLC (dba Enterprise Holdings); J. McCartt, Fluor Corporation; Robert Peeler, Ford Motor Company; R. King Hillier, Harris Health System; Mike Bradford, Midland County; Fred Shannon, National Safety Council; Janiece Crenwelge, Nationwide Insurance; Gregory Hamilton, Sheriffs Association of Texas; Velma Cruz, Sprint; Sano Blocker, Luminant, TXU Energy, Energy Future Holdings; Susan Ross, State Farm Insurance; Thomas Ratliff, T-Mobile USA and the American Insurance Association; Maureen Milligan and Mariah Ramon, Teaching Hospitals of Texas; Rebekah Schroeder, Texas Children's Hospital; Michael Pacheco, Texas Farm Bureau; John Hawkins, Texas Hospital Association; Troy Alexander, Texas Medical

Association; Monty Wynn, Texas Municipal League; Dennis Kearns, Texas Railroad Association; Les Findeisen, Texas Trucking Association; Ware Wendell, Texas Watch; Lon Craft, TMPA; Melody Chatelle, United Ways of Texas; John Pitts, Jr., UPS; Kari King, USAA; Richard Lawson, Verizon Wireless; Kinsey Myers; Mike Myers)

Against — (*Registered, but did not testify*: Teresa Beckmeyer)

On — Alva Ferdinand, Texas A&M Health Science Center; (*Registered, but did not testify*: Robert Bailey, Texas Department of Public Safety; Mark Marek, Texas Department of Transportation)

BACKGROUND: Transportation Code, sec. 545.425 defines a “wireless communication device” as a device that uses a commercial mobile service, such as a cell phone. A “hands-free device” means a device that has speakerphone capability or a telephone attachment, permanently installed in a vehicle or not, that allows operators to use a wireless communication device without their hands.

Under section 545.425, drivers 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 may result in a fine. In addition, the driver of a bus with a minor on board may not use a wireless communication device unless the bus is stopped. It is an affirmative defense to prosecution if the device was being used under this section to make an emergency call.

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

DIGEST:

CSHB 80 would make it a misdemeanor offense for a motorist to read, write, or send a text-based communication with a portable wireless communication device, such as a mobile phone, while operating a motor vehicle, except when the vehicle was stopped and outside a travel lane.

A “text-based communication” would be defined as data that was read from or manually entered into a wireless communication device, such as an SMS text, e-mail, or instant message. The bill would expand the definition of “hands-free device” to include a function that allows use of a wireless communication device without the use of the operator’s hands except to turn on or off a function of the device.

The first offense would be punishable by a fine between \$25 and \$99, and a subsequent offense would carry a fine between \$100 and \$200. The Department of Public Safety (DPS) would not assign points to a person's license as part of the Driver Responsibility Program for using a portable wireless communication device to send a text-based communication while driving.

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

- to read, select, or enter a number or name to make a phone call;
- in conjunction with voice-operated technology, a push-to-talk function, or a hands-free device;
- to use a global positioning system (GPS);
- to report illegal activity or summon emergency help;
- to read a text message the motorist believed was related to an emergency; or
- to relay information to a dispatcher through a device affixed to the vehicle as part of the driver's job.

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 other than a portable wireless communication

device.

Law-enforcement members who stop motorists could not take possession of or inspect devices to see if a motorist had been texting, except as already authorized by current law.

The Texas Department of Transportation would be required to post signs at Interstate and U.S. highways entering the state indicating that texting while driving is prohibited and carries a fine.

CSHB 80 would not pre-empt local ordinances, rules, or regulations that were consistent with or more stringent than the above provisions of the bill.

The bill also would make it a misdemeanor for a driver under 18 years old to use a handheld or hands-free wireless communication device while operating a vehicle and for a driver under 17 to use a handheld or hands-free wireless communication device while driving a motorcycle or moped. The offense would be punishable by a fine between \$25 and \$99 for the first conviction and between \$100 and \$200 for subsequent convictions.

The driver's license exam would have to test an applicant's knowledge of the effect on safe driving of using a wireless communication device or engaging in other actions that could distract a driver.

The bill would take effect September 1, 2015, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 80 is a common-sense measure that would improve the safety of the state's roadways and send a clear message to motorists that texting while driving is dangerous.

According to the Texas Department of Transportation, distracted driving is responsible for one in five vehicle crashes. In 2013, more than 450 of the roadway fatalities in Texas were related to distracted driving.

The safety hazards of texting while driving are comparable to drinking and driving. According to the National Highway Traffic Safety Administration, motorists are 23 times more likely to crash when texting behind the wheel. According to some estimates, texting-related crashes cost Texans an estimated \$1.3 billion in 2013 due to costs of medical care, emergency services, vehicle repairs, insurance premiums, and lost productivity and wages.

CSHB 80 would bring Texas in line with 44 other states, plus Washington, D.C., Puerto Rico, Guam, and the U.S. Virgin Islands, in banning texting while driving. Other states that have banned texting while driving have experienced an average of 1.6 fewer traffic fatalities per month.

The bill would create a uniform state law that would provide Texas drivers with more predictability by prohibiting texting while driving across the state. Current local ordinances are inconsistent with each other and can create confusion when people drive from one jurisdiction to another. CSHB 80 would alleviate some of this confusion, while not preempting stricter local ordinances.

Contrary to concerns expressed about similar measures, the bill would be enforceable. State law already prohibits texting while driving in certain circumstances, and law enforcement has had no difficulty enforcing these laws.

Traffic safety measures like CSHB 80 do not infringe on individual liberties. In order to use public resources like roads, motorists must observe a variety of restrictions related to behavior and equipment and must operate vehicles in a safe and consistent way to ensure public safety.

Texting while driving behaviors cannot be reached with reckless driving laws because those laws require wanton and wilful conduct, which a jury is unlikely to find in the case of texting while driving.

This bill could help spur cultural change among Texas motorists. In the

same way that many drivers began to use seatbelts habitually after it became required by law, they would be encouraged under CSHB 80 to avoid the distraction of texting and pay more attention to driving.

OPPONENTS
SAY:

CSHB 80, while well intentioned, would not be the best way to address the dangers of texting while driving in Texas. This bill could be difficult to enforce and would encroach on the individual liberties of adult motorists. The behavior it seeks to curtail should be addressed with current laws.

CSHB 80 would single out one potentially dangerous distraction, texting, while ignoring the hazards of other distractions while driving. Motorists can be distracted by a wide variety of activities while driving, including eating, grooming, and operating audio systems. Better data regarding texting and driving should be collected before banning it outright.

The number of exceptions to the prohibition on texting while driving could create challenges for law enforcement in distinguishing between drivers who are texting and those who are using the phone for legal purposes, making the law difficult to enforce. The affirmative defenses would place the burden on motorists to show that they were engaged in legal behavior.

Prohibiting and penalizing texting while driving would infringe on the liberties of Texans by attempting to micromanage motorists' behavior. Mobile-phone use has become a central part of many Texans' lives, and the bill could interfere with their ability to conduct personal and professional business.

Dangerous driving that is caused by texting while driving should be addressed with existing laws, such as those for reckless driving, rather than creating new laws to curb that behavior.

OTHER
OPPONENTS
SAY:

CSHB 80 would treat texting while driving as a state issue when it is better handled at the local level. Texting while driving may be a more severe problem in some areas of the state than it is in others, and

municipalities are in the best position to tailor these laws to address their unique circumstances. Local governments in areas where many texting-related crashes occur should address texting while driving with local ordinances.

NOTES:

A companion bill, SB 25 by Zaffirini, was referred to the Senate Transportation Committee on January 26.