

SUBJECT: Prohibiting texting while driving

COMMITTEE: Transportation — favorable, without amendment

VOTE: 13 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel,
Minjarez, Phillips, Pickett, Simmons, E. Thompson, S. Thompson, Wray

0 nays

WITNESSES: For — Robin Garza, Ben Taub Hospital and TETAF; Justin Neumann, Encana Corporation; Matthew May, Houston Police Department; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Noel Johnson, TMPA; Kevin Madison, Michael Myers, and James Shaffer; (*Registered, but did not testify*: Anne O'Ryan, AAA Texas; Jay Thompson, AFACT; Myra Leo, Alliance of Automobile Manufacturers; Billy Phenix, Allstate Insurance Company; Thomas Ratliff, American Insurance Association and T-Mobile USA; Dan Hinkle, Apache Corporation and Texas Academy of Family Physicians; Julia Rathgeber, Association of Electric Companies of Texas; Joel Romo, Association of Texas EMS Professionals; Jo Cassandra Cuevas and Carl Isett, AT&T; Kinnan Golemon, Austin White Lime Company, Devon Energy, Noble Energy, and Shell Oil Company; Chris Hosek, BHP Billiton, Newfield Exploration, and SM Energy; Robin Stallings, BikeTexas; April Beggs, Blue Cross and Blue Shield Texas; Dennis Kearns, BNSF Railway; Paula Barnett, BP America; Jeff Bonham, CenterPoint Energy; Steve Perry, Chevron USA; Paul Townsend, Children's Hospital Association of Texas; John Marlow, Chubb; Eddie Solis, City of Arlington; Chase Bearden, Coalition of Texans with Disabilities; Chris Jones, Combined Law Enforcement Associations of Texas; Stan Casey, Concho Resources; Tom Sellers, ConocoPhillips; Frederick Frazier, Dallas Police Association; Daniel Womack, Dow Chemical; Brian Yarbrough, EAN Holdings; Patrick Renhart, El Paso Electric; Samantha Omev, ExxonMobil; J. McCartt, Fluor; Robert Culley, General Motors; Albert Cheng, Harris County Public Health and Texas Public Health Coalition; David Weber, Hochheim Prairie Insurance; Lee Loftis, Independent Insurance Agents of Texas; Mike Toomey, Liberty Mutual; Jesse Ozuna, City of Houston Mayor's Office; Sebastien Laroche,

Methodist Healthcare Ministries of South Texas, Inc.; Paul Martin, National Association of Mutual Insurance Companies; Janiece Crenwelge, Nationwide Insurance; Robert E. Johnson Jr., Nissan North America; Parker McCollough, NRG Energy; Julie Moore, Occidental Petroleum; Ben Shepperd, Permian Basin Petroleum Association; Jim Dow, Pioneer Natural Resources; Connie Johnson, Progressive; Joe Woods, Property Casualty Insurers Association of America; James Jones, San Antonio Police Dept.; Todd Morgan, Sprint; John Stuckemeyer, State Farm Insurance; Stephanie Simpson, Texas Association of Manufacturers; Scott Stewart, Texas Chemical Council; Michael Grimes, Texas College of Emergency Physicians; Dinah Welsh, TETAF; Michael Pacheco, Texas Farm Bureau; John Hawkins, Texas Hospital Association; Lindsey Miller, Texas Independent Producers and Royalty Owners Association; Troy Alexander, Texas Medical Association and Texas Public Health Coalition; Susan Horton, Texas Municipal League; Andrew Cates, Texas Nurses Association; Clayton Travis, Texas Pediatric Society; Thure Cannon, Texas Pipeline Association; Jessica Anderson, Texas Police Chief's Association; Les Findeisen, Texas Trucking Association; Lucas Meyers, Travelers Companies, Inc. and Subsidiaries; Chris Miller, Uber; Aidan Utzman, United Ways of Texas; Jordan Williford, UPS; Darlene Brugnoli and Richard Lawson, Verizon; Randy Vivian, Victoria Chamber of Commerce; Brent Chaney, Vistra Energy, TXU Energy, and Luminant; Royce Poinsett, Wal-Mart; Chris Macomb, Waste Management of Texas; Melody Chatelle, Dee Davila-Estelle, Courtney DeBower, Kevin Estelle, and Tracy Myers)

Against — (*Registered, but did not testify*: Chris Hosek, QEP Resources; Terri Hall, Texans Uniting for Reform and Freedom and Texans for Toll-Free Highways)

On — Emily Gerrick, Texas Fair Defense Project; (*Registered, but did not testify*: Mark Marek, Texas Department of Transportation)

BACKGROUND: Transportation Code, sec. 545.424 prohibits drivers under the age of 18 from using a wireless communication device except in an emergency.

Under sec. 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. “Wireless communication device” is defined as a device, such as a cell phone, that uses a commercial mobile service. “Hands-free device” is defined as a feature or attachment that allows use of the wireless communication device without use of either of the operator’s hands.

DIGEST: HB 62 would make it a misdemeanor offense for a driver to use a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle was stopped. 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 driver would have a defense to prosecution if the driver was:

- using a hands-free device, including voice-operated technology;
- reporting illegal activity or summoning emergency help;
- reading an electronic message that the person reasonably believed concerned an emergency; or
- relaying information to a dispatcher or digital network through a device affixed to the vehicle as part of the driver’s job.

The offense also would not apply to drivers of authorized emergency or law enforcement vehicles acting in an official capacity or to drivers licensed by the Federal Communications Commission operating a radio frequency device other than a portable wireless communication device.

HB 62 would require that the driver’s license test cover knowledge about the effects of texting while driving or other actions that constitute distracted driving.

The bill would prohibit the seizure or inspection of a driver’s cell phone by a peace officer unless it was authorized by another law and would prohibit the Department of Motor Vehicles from assigning points to a driver’s license for a texting-while-driving offense.

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

The bill would take effect September 1, 2017, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 62 would save lives and prevent injuries by reducing distracted driving incidents. It also would resolve confusing differences in local laws and implement common sense restrictions that are not overly burdensome.

The Texas Department of Transportation has reported that all distracted driving resulted in about 470 fatalities and more than 18,000 injuries on Texas roads in 2015, with similar numbers of incidents in previous years. These are likely conservative estimates because many drivers involved in crashes are hesitant to admit they were distracted.

Drivers are more likely to crash while texting, although the magnitude of the effect varies among studies. Crashes caused by distracted driving also needlessly create large social costs through increased demands on emergency services and other forms of medical care. These crashes impose high economic costs through higher insurance premiums and lost productivity and wages.

HB 62 would be effective at reducing texting while driving. A statewide ban would create a culture of safety and a deterrent that a patchwork set of local regulations could not achieve. That certain jurisdictions have no prohibition on texting while driving sends a message that it is okay to text and drive in spite of evidence of the associated risks. A 2016 study of AT&T's wireless customers estimated that the four states without full texting-while-driving bans have about a 17 percent higher rate of texting while driving than the other 46 states.

Contrary to some concerns, there has been no demonstrated outcry against unconstitutional searches sparked by the many local ordinances in Texas

prohibiting texting while driving. These ordinances have been a successful deterrent, neither infringing on rights nor overly burdening local law enforcement.

HB 62 would be enforceable. Local ordinances and state law already prohibit texting while driving in certain circumstances, and none of the 46 states that have adopted such laws report problems with enforceability. Texting while driving bans are enforced no differently than many other traffic laws, such as those governing the use of seat belts or speeding, including many laws that have affirmative defenses in statute.

HB 62 also would create more regulatory certainty by establishing a uniform set of rules to replace the more than 100 individual city regulations that currently govern texting while driving in Texas. Drivers frequently travel through multiple jurisdictions, and the plethora of local regulations makes it unreasonably difficult for citizens to know and obey the law. In addition, the bill would fill a gap in rural, unincorporated areas where no city regulation exists. In these areas, where many roads have two lanes with no physical divider between them, texting while driving increases the risk of deadly head-on collisions.

The bill would not be overly burdensome on drivers because it would allow drivers to use phones for certain low-risk purposes, such as GPS navigation and voice activated features. It is focused on eliminating the most harmful forms of distracted driving.

Texting while driving is not merely a personal choice. It is a decision that could kill or injure pedestrians and other drivers. Driving is a privilege, and no one has a right to text and drive.

**OPPONENTS
SAY:**

HB 62 would be ineffective at improving public safety and in some cases actually could aggravate the effects of distracted driving. Rather than establish a government overreach into the lives of citizens, the state should instead pursue other policies to curb distracted driving and leave the issue in the hands of local jurisdictions.

Although texting while driving is irresponsible behavior, studies are mixed on whether texting-while-driving bans actually reduce fatalities or crashes. A 2010 report from the Highway Loss Data Institute hypothesized that such laws could cause drivers to conceal their phones in their laps, reducing attention to the road and increasing accidents. Researchers with the Insurance Institute for Highway Safety reviewed 11 other papers on texting while driving bans and found that the ultimate effect on traffic accidents and fatalities is unclear. This could be because texting while driving accounts for a relatively small percentage of distracted driving.

Instead of implementing an ineffective government ban, the state should focus on including important information in driving safety and driver's education courses and public messages. Criminalization ultimately could be counterproductive to the progress made with such initiatives. The key to encouraging safe driving is providing information and education about the dangers of distracted driving.

Creating yet another criminal offense would increase citizen interactions with law enforcement. This could result in a greater number of unconstitutional searches or other rights violations or could stretch the already strained resources of police, distracting from more important crimes.

This bill, while well intentioned, would be difficult to enforce because law enforcement would be hard-pressed to determine whether someone was texting or using a phone for a lawful reason. Laws that are not enforceable reduce the credibility of the law. In addition, the affirmative defenses in the bill would place the burden improperly on defendants to prove their innocence.

HB 62 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.

NOTES: A companion bill, SB 31 by Zaffirini, was reported favorably by the Senate Committee on State Affairs on March 14.