

Texas cities move to ban texting while driving

- 2 Municipalities restrict texting while driving
- 2 Table: Municipalities with texting ordinances
- 3 Debate over statewide bans
- 4 State restrictions on mobile phone use
- 4 Map: Bans on texting while driving in the U.S.
- 5 Research on text messaging, crash risk
- 5 A state or a local issue?

On the first day of 2012, Harlingen became the latest of nearly two dozen Texas municipalities to ban texting while driving. The Harlingen ordinance creates a \$200 fine for viewing or sending a text-based communication — including a text message, an instant message, a photo, or an e-mail — while driving. The ordinance exempts any driver who is operating a hands-free device or global positioning system (GPS) device or obtaining emergency assistance or whose vehicle is stopped.

More than 20 Texas cities, including San Antonio, Brownsville, McAllen, Mission, Missouri City, Conroe, and Galveston, have adopted ordinances prohibiting texting while driving since November 2009, when Austin became the first to enact a citywide ban. In 2010, El Paso went a step further and became the only municipality in the state to ban all hand-held mobile phone use while driving.

In addition to the local ordinances, the Texas Legislature has enacted separate statewide restrictions on texting while driving. For instance, in 2009 it prohibited drivers under the age of 18 or traveling through a school zone from using a hand-held mobile device. But in June 2011, Gov. Rick Perry vetoed HB 242 by Craddick, a statewide ban on texting while driving enacted by the 82nd Legislature, saying that it represented a “government effort to micromanage the behavior of adults” and an “overreach” of legitimate governmental authority.

This report reviews local efforts to ban texting while driving in Texas, research related to the effects of texting while driving, and the recent debate over implementing a ban statewide.

Many questions remain unanswered in the wake of the governor’s veto of a statewide ban. Should the state enact broader restrictions on wireless use while driving, particularly texting while driving? If not, should it adopt uniform standards for local restrictions on texting while driving, as it has with red-light cameras? Or is it best to leave this decision to municipalities, which may be better positioned to ascertain whether and how prohibitions should be implemented?

Debate over possible state action on texting while driving occurs in the context of possible further federal restrictions on the practice. The Federal Motor Carrier Safety Administration recently banned commercial drivers from using any hand-held mobile devices. In 2009, President Obama signed an executive order prohibiting federal employees from texting while driving government-owned vehicles, while driving private vehicles on government business, or while using government-supplied electronic equipment. Also, Congress is considering legislation that would create federal funding incentives for states to implement texting-while-driving bans, although a bill with this provision has yet to advance to a full vote in either chamber.

Municipalities restrict texting while driving

Harlingen joins several other municipalities, ranging in population from roughly 1,000 to 365,000, that began enforcing prohibitions on texting while driving last fall. In September, Arlington created a \$200 fine for texting while driving, as did Magnolia. Alamo, Mount Vernon, and Nacogdoches later followed suit with a \$500 fine.

At least 23 Texas municipalities have adopted citywide prohibitions on texting while driving (*see table*). This total does not include about a dozen local governments that have prohibited the use of hand-held cellular devices while driving in a school zone, but whose ordinances were pre-empted by state law forbidding the practice.

Texas municipalities with ordinances prohibiting texting while driving

City	Maximum penalty/violation	2010 population	Year adopted
Alamo	\$500	18,353	2011
Arlington	\$200	365,438	2011
Austin	\$500	790,390	2009
Bellaire	\$500	16,855	2009
Brownsville	\$500	175,023	2011
Conroe	\$500	56,207	2010
El Paso*	\$500	649,121	2010
Galveston	\$500	47,743	2010
Harlingen	\$200	64,849	2011
Magnolia	\$200	1,393	2011
McAllen	\$500	129,877	2011
Mission	\$500	77,058	2011
Missouri City	\$500	67,358	2010
Mount Vernon	\$500	2,662	2011
Nacogdoches	\$500	32,996	2011
Palmview	\$250	5,460	2011
Penitas	\$200	4,403	2011
San Antonio	\$200	1,327,407	2010
Shoreacres	\$500	1,493	2010
Stephenville	\$200	17,123	2010
Tomball	\$200	10,753	2010
Universal City	\$200	18,530	2010
West University Place	\$500	14,787	2009

* Prohibits all use of hand-held electronic devices while driving.

Municipal bans on texting while driving vary according to the specific activities prohibited and the fines imposed (generally ranging from \$200, the standard maximum state traffic fine, to \$500, the maximum fine for a

class C misdemeanor). Such bans universally prohibit text messaging, and many extend to using other common “smartphone” features, such as software applications and e-mail. They also vary in the exceptions granted. Austin, for

instance, allows texting while stopped at a light, but San Antonio does not. The bans generally exempt peace officers and drivers in emergency situations.

Enforcement practices in cities with texting-while-driving bans also vary. Local law enforcement authorities adopt enforcement procedures in accord with local ordinances as well as with different departmental practices. Some local authorities vigorously enforce bans on cell phone use, while others tend to issue citations mainly when texting coincides with another violation. As such, the number of citations varies

considerably. For example, San Antonio issued about 320 citations in 2011, the first full year of its ordinance, while Missouri City, a much smaller city, issued only seven citations in the first year-and-a-half of its ordinance.

It is difficult to say how many additional municipalities will outlaw texting while driving. In January, the Amarillo Traffic Commission unanimously voted to recommend a citywide ordinance outlawing texting while driving, pending city council approval. The city has planned some public hearings on the matter

Debate over statewide texting-while-driving bans

Debate on whether to ban texting while driving statewide has settled on a few major points of contention: the extent to which the bans are justified, whether they are effective, and whether and how they can be enforced.

In vetoing HB 242, Gov. Perry branded the bill a “government effort to micromanage the behavior of adults.” While the state acted legitimately in restricting wireless use by novice drivers and in school zones, he said, HB 242 was an “overreach” of this authority. As an alternative, the governor suggested driver’s education courses and public service announcements to inform the public about the dangers of texting while driving.

Supporters of statewide texting-while-driving bans say that this increasingly widespread behavior endangers more than the driver. They note that the state enforces many laws designed to improve public safety while driving, such as mandatory seatbelt laws. Recent research identifies texting while driving as especially dangerous, they say, tantamount to drinking while driving and reckless driving — offenses that carry stiff penalties. Laws against this behavior do not preclude other initiatives, such as driver education, designed to discourage the practice.

Supporters of texting-while-driving bans say the difficulty of enforcing them does not negate their value. Many traffic laws, such as those outlawing driving while intoxicated, are difficult to enforce. This should not prevent the state from attempting to enforce laws against behaviors that threaten public safety.

Opponents argue that such restrictions represent unwarranted government intrusion into the private affairs of adults without a clear safety benefit. These laws attempt to regulate personal communication among adults even though there is no solid evidence showing that they significantly alter driver behavior. Opponents cite one study that found an increase in accidents in jurisdictions with texting-while-driving bans, arguing that attempts to avoid breaking this law can cause even more accidents (*see* “Research on text messaging and crash risk,” *page 5*).

Opponents further note that the bans are extremely hard to enforce. Peace officers, they say, generally cannot discern between when someone is sending a text message, which is prohibited, or someone is dialing a phone or merely holding the device, which generally is allowed.

before taking further action. Other municipalities, such as Odessa and Kilgore, have recently considered but rejected proposed texting-while-driving bans.

State restrictions on mobile phone use

Nationally, 35 states and the District of Columbia have adopted general statewide bans on texting while driving, according to the Insurance Institute for Highway Safety, with 10 of those prohibiting any use of hand-held devices while driving. Seven states have enacted partial bans, and another eight states lack any restrictions (*see map*).

Texas falls into the “partial ban” category and prohibits use of a hand-held device for drivers:

- under 18 years old (or motorcyclists under 17 years old);
- operating a bus when a minor is present; or
- passing through a school zone.

Minors. In 2005, SB 1257 by Lindsay enacted restrictions on hand-held device use by minor drivers in Texas, which the Legislature modified in 2009. Currently, a driver under the age of 18 may not use a wireless communication device except in an emergency. The same restriction applies to those under 17 with a restricted motorcycle or moped license. The penalty for a violation is the standard misdemeanor traffic fine of no more than \$200.

Current law under SB 1257 also prohibits bus drivers with a minor passenger from operating a hand-

held device except in an emergency or while the bus is stationary. The penalty is the standard misdemeanor traffic fine of no more than \$200.

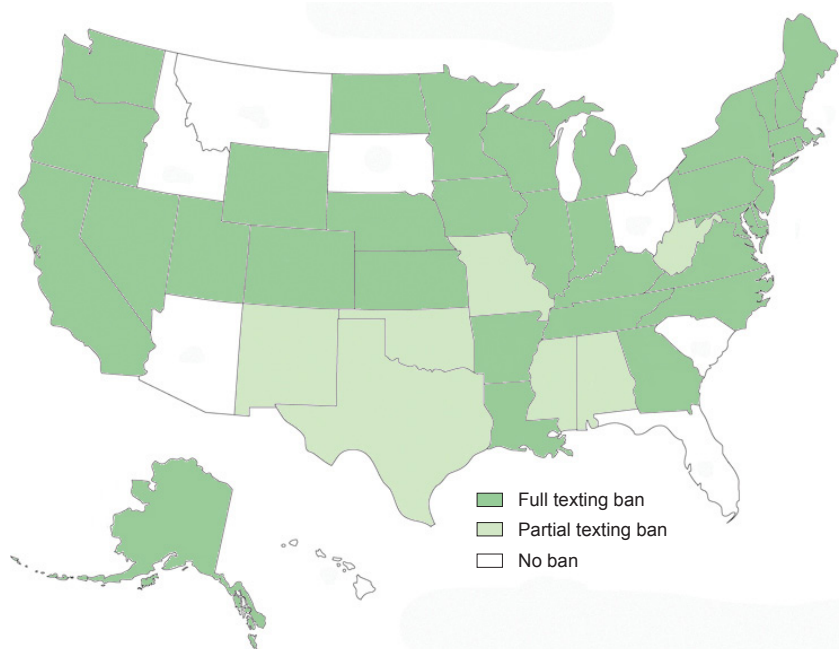
School zones. In 2009, the 81st Legislature enacted HB 55 by Branch to prohibit a driver from using a wireless device in a school crossing zone unless the vehicle is stopped or the device is used hands free. The offense is a misdemeanor, with a standard state traffic fine of up to \$200, and it is a defense against prosecution if the device is used to make an emergency call. The law requires municipalities to post signs at each zone informing drivers of the restriction and allows a defense for drivers passing through zones without signs.

In 2011, the 82nd Legislature enacted HB 1899 by Pickett, modifying the 2009 law to exempt municipalities like El Paso, which bans all hand-held mobile phone use

while driving, from posting signs at every school zone. The bill’s supporters argued that the law would address concerns about the costs of posting signs at every school zone for local governments with bans on all hand-held mobile phone use while driving.

All drivers, all areas. The governor nixed the Legislature’s attempt to impose a statewide ban on texting while driving in June when he vetoed HB 242 by Craddick. The bill would have prohibited a driver from using a hand-held wireless device to read, write, or send a text message, instant message, or e-mail, unless the vehicle was stopped. A driver would have been exempt if dialing a phone number, using a hands-free or GPS device, or relaying information using a device affixed to the vehicle as part of the driver’s job. (*See “Debate over statewide texting-while-driving bans,” page 3.*)

Bans on texting while driving in the United States



Source: Insurance Institute for Highway Safety

A state or a local issue?

The debate over the growing number of municipalities banning texting while driving pits the interests of local jurisdictions, which attempt to craft ordinances to reflect their residents' preferences, against the interests of the state in ensuring a minimum standard of legal uniformity.

Supporters of local prohibitions against texting while driving say municipalities with such ordinances legitimately tailor the law to address problems in their jurisdictions. Unlike 35 other states, Texas has no statewide prohibition on texting while driving, and the veto of HB 242 has raised doubt about whether it will in the near future. Municipalities have an undeniable mandate to protect the safety of their residents,

Research on text messaging and crash risk

Many studies have attempted to gauge the effects of mobile phone use on driving, but more recent research has focused specifically on texting while driving.

In August 2011, a report by the Texas Transportation Institute reaffirmed recent research that found people who text while driving have a significantly higher risk of being involved in a crash. The study broke new ground by observing the effects of reading and writing text messages on drivers navigating a closed driving course.

The study found that both reading and writing texts significantly delayed reaction time — by a factor of 2.5 times for participants writing a text message and by a factor of 1.9 for those reading texts. The study also found more missed responses, greater inconsistency in speed and lane positioning, and less visual contact with the road among drivers reading and writing texts.

A 2009 study published in the journal *Human Factors* found that young drivers who sent and received texts spent up to four times less time watching the road. The study required novice drivers between the ages of 18 and 21 to read and write text messages while in a driving simulation. Drivers who were texting had up to 50 percent more variation in lane position, were 140 percent more likely to miss lane changes, and had greater variability in following distance behind a lead vehicle than drivers who were not texting.

A 2009 study sponsored by the U.S. Department of Transportation for the Virginia Tech Transportation Institute found that texting while driving increased by a factor of 23 the likelihood of drivers being involved in safety-critical events (crashes, near-crashes, conflicts, and lane deviations). The study examined driver distraction in commercial motor vehicle operations and observed drivers who had agreed to operate under surveillance for an extended period. Of all the distracting behaviors monitored, texting resulted in the longest time spent without checking the roadway (4.6 seconds over a 6-second interval, equivalent to the time required for a driver to travel about the distance of a football field at 55 miles per hour).

However, one study suggested that bans on texting while driving may actually increase the dangers that stem from the practice. A September 2010 bulletin by the Highway Loss Data Institute, *Texting Law and Collision Claim Frequencies*, found a small increase in insurance claims in states that enacted texting-while-driving bans. The report hypothesized that the unexpected finding could be a result of motorists trying to hide their phones from view while texting, directing their eyes further from the road and creating an even more hazardous driving situation.

supporters say, and inaction at the state level should not bar them from taking decisive action toward this end.

State action could reduce or eliminate municipalities' flexibility to enact laws in response to their unique problems. Although texting while driving may be a significant public safety concern in Harlingen and Brownsville, it may not be in another city or in rural areas, say those supporting local prohibitions rather than a statewide ban.

Supporters of local prohibitions against texting while driving argue that citizens are responsible for knowing the laws in each jurisdiction through which they pass. Local ordinances do vary, and the Texas Constitution sanctions this by allowing municipalities to adopt charters that reflect their unique composition and adopt laws accordingly. Prohibitions against texting while driving are essentially no different than other ordinances in that municipalities must work to inform the public about the law and the public is responsible for learning about and abiding by new laws.

Opponents of local texting-while-driving bans say that the growing number of municipalities with such restrictions is starting to resemble a checkerboard of regulation that makes it unreasonably difficult for citizens to obey the law. Traffic laws are distinct from other municipal ordinances, they say, since a person can easily pass through many jurisdictions on a highway. Also, residents of unincorporated areas have no way to adopt a local ban on texting while driving. Only a uniform state law would cover those outside of city limits.

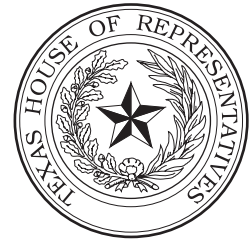
Opponents invoke state law governing "rules of the road," which establish uniform, statewide penalties for driving infractions. There often is no easy way to tell when someone passes from one of Texas' 1,215 incorporated municipalities into another on a highway. The state has adopted uniform speed limits, driving practices, and requirements for red-light cameras for good reason; without them, opponents say, Texans would be awash in a flood of local requirements that would be prohibitively difficult to navigate.

Opponents note that local texting-while-driving bans vary significantly. Some municipalities, like Austin, allow texting while stopped in traffic, while others, like San Antonio, allow it only while stopped and pulled over by the curb. Some municipalities prohibit using any software applications commonly found on smartphones, while others limit the restriction to reading or composing a text message. As noted above, El Paso bans all hand-held mobile phone use while driving.

At a minimum, opponents say, the state should follow the precedent it established with red-light cameras and adopt universal requirements for municipalities that opt to prohibit texting while driving. State-adopted universal requirements could ensure that municipalities with such laws post notice informing the public of the law, adhere to certain procedures regarding citations, and set requirements governing what activities such ordinances may prohibit.

— *by Andrei Lubomudrov*

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