

SUBJECT: Prohibiting use of a wireless device while driving in a school zone

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Pickett, Phillips, Callegari, Y. Davis, Harper-Brown, McClendon, Merritt, T. Smith, W. Smith

0 nays

2 absent — Dunnam, Guillen

WITNESSES: For — Randy Millican, Highland Park Department of Public Safety Town of Highland Park; Jeanette Rash, Texas Towing and Storage Association; Gary Tittle, for David Kunkle, Chief of Police, Dallas Police Department; (*Registered, but did not testify*: Chris W Jones, Combined Law Enforcement Associations of Texas; Ruben Longoria, Texas Association of School Boards; Anne O'Ryan, AAA Texas)

Against — Glen Reid, John Robert Stratton, American Radio Relay League; (*Registered, but did not testify*: Paul Gilbert; Colleen McGue, American Civil Liberties Union)

On — Les Findeisen, Texas Motor Transportation Association; (*Registered, but did not testify*: John Madden, Texas Department of Public Safety, Ted Melina Raab, Texas AFT)

DIGEST: CSHB 55 would prohibit the operator of a vehicle from using a wireless communication device while in a school crossing zone unless the vehicle was stopped or the device was used with a hands-free device. The bill would establish a misdemeanor offense with a fine no more than \$200 and would create an affirmative defense to prosecution if the device was used to make an emergency call to:

- an emergency response service;
- a hospital, health clinic, or a medical doctor's office;
- a fire or police department; or
- an individual to administer first aid treatment.

The bill would not apply to an operator of authorized emergency vehicle using a device while acting in an official capacity, or an operator who is licensed by the Federal Communications Commission to operate a wireless communication device or a radio frequency device.

The bill would define a “wireless communication device” as a device that uses a commercial mobile service, as defined in federal codes regulating telegraphs, telephones, and radiotelegraphs.

The bill would take effect September 1, 2009, and would apply to an offense on or after that date.

**SUPPORTERS
SAY:**

CSHB 55 would create consistency and promote safety by implementing a statewide prohibition on the use of cell phones in school zones. A growing body of research has resoundingly concluded that cell phones distract drivers and increase response times to sudden traffic incidents. Nowhere is this added distraction more dangerous than in school zones, which are characterized by numerous sudden traffic incidents, such as students crossing a street to reach a sidewalk or make their way to a waiting vehicle.

In response to these obvious hazards, many municipalities have adopted ordinances to prohibit the use of cell phones to varying extents in school zones. While understandable, differing local approaches to this problem may create confusion in areas with multiple adjacent municipalities. Local ordinances may not be well publicized and may have specific rules that vary between neighboring localities.

Creating a statewide prohibition would create consistent, well-publicized standards barring cell phone use without a hands-free device in school zones. The bill would create a primary offense, allowing an officer to pull over an offending party, which would be critical to the enforcement of the cell phone ban. For it to be effective, an officer would have to be vested with the authority to pull over an individual in visible violation of the prohibition.

**OPPONENTS
SAY:**

CSHB 55 would single out one among an innumerable number of distractions that can result in dangerous driving. Drivers are commonly distracted by radios, various auto controls, passengers, and a host of other potential distractions that decrease awareness and reduce judgment time.

Banning the use of cell phones without hands-free devices, even in limited areas, would not address the core issue of distracted driving.

OTHER
OPPONENTS
SAY:

CSHB 55 would create a primary offense for using a cell phone in a school zone, an infraction that would be left to the discretion of an officer and very difficult to discern. Because it would be difficult to prove either affirmatively or negatively that an individual was using a cell phone without a hands-free device while driving, this provision would give license to an officer to stop people on a pretense that could not be verified easily. The bill should be revised to include cell phone use in a school zone as a secondary offense that could be enforced only in the course of pursuing a driver for a primary offense, such as speeding.