

**Bill with  
Summary and Analysis**

**SB 402**  
*(Distracted Driving)*

**Sponsor:  
Washington Blue**



SUBSTITUTE FOR  
SENATE BILL NO. 402

A bill to amend 1949 PA 300, entitled  
"Michigan vehicle code,"  
(MCL 257.1 to 257.923) by adding section 602b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 602B. (1) EXCEPT AS PROVIDED IN THIS SECTION, A PERSON  
2 SHALL NOT READ, WRITE, OR SEND A TEXT MESSAGE ON A WIRELESS 2-WAY  
3 COMMUNICATION DEVICE THAT IS LOCATED IN THE PERSON'S HAND OR IN THE  
4 PERSON'S LAP, INCLUDING A WIRELESS TELEPHONE USED IN CELLULAR  
5 TELEPHONE SERVICE OR PERSONAL COMMUNICATION SERVICE, WHILE  
6 OPERATING A MOTOR VEHICLE THAT IS MOVING ON A HIGHWAY OR STREET IN  
7 THIS STATE. AS USED IN THIS SUBSECTION, A WIRELESS 2-WAY  
8 COMMUNICATION DEVICE DOES NOT INCLUDE A GLOBAL POSITIONING OR

1 NAVIGATION SYSTEM THAT IS AFFIXED TO THE MOTOR VEHICLE.

2 (2) SUBSECTION (1) DOES NOT APPLY TO PROHIBIT AN INDIVIDUAL  
3 FROM OPERATING A CELLULAR TELEPHONE OR OTHER COMMUNICATION DEVICE  
4 USING HANDS-FREE TECHNOLOGY OR FROM USING A CELLULAR TELEPHONE OR  
5 OTHER COMMUNICATION DEVICE TO DO ANY OF THE FOLLOWING:

6 (A) REPORT A TRAFFIC ACCIDENT, MEDICAL EMERGENCY, OR SERIOUS  
7 ROAD HAZARD.

8 (B) REPORT A SITUATION IN WHICH THE PERSON BELIEVES HIS OR HER  
9 PERSONAL SAFETY IS IN JEOPARDY.

10 (C) REPORT OR AVERT THE PERPETRATION OR POTENTIAL PERPETRATION  
11 OF A CRIMINAL ACT AGAINST THE INDIVIDUAL OR ANOTHER PERSON.

12 (D) CARRY OUT OFFICIAL DUTIES AS A POLICE OFFICER, LAW  
13 ENFORCEMENT OFFICIAL, MEMBER OF A PAID OR VOLUNTEER FIRE  
14 DEPARTMENT, OR OPERATOR OF AN EMERGENCY VEHICLE.

15 (3) ENFORCEMENT OF THIS SECTION BY STATE OR LOCAL LAW  
16 ENFORCEMENT AGENCIES SHALL BE ACCOMPLISHED ONLY AS A SECONDARY  
17 ACTION WHEN A DRIVER OF A MOTOR VEHICLE HAS BEEN DETAINED FOR A  
18 SUSPECTED VIOLATION OF ANOTHER SECTION OF THIS ACT.

19 (4) THIS SECTION SUPERSEDES ALL LOCAL ORDINANCES REGULATING  
20 THE USE OF A COMMUNICATION DEVICE WHILE OPERATING A MOTOR VEHICLE  
21 IN MOTION ON A HIGHWAY OR STREET, EXCEPT THAT A UNIT OF LOCAL  
22 GOVERNMENT MAY ADOPT AN ORDINANCE OR ENFORCE AN EXISTING ORDINANCE  
23 SUBSTANTIALLY CORRESPONDING TO THIS SECTION.

24 Enacting section 1. This amendatory act does not take effect  
25 unless Senate Bill No. 468 of the 95th Legislature is enacted into  
26 law.



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Senate Bill 402 (Substitute S-3 as reported by the Committee of the Whole)  
Senate Bill 468 (Substitute S-4 as reported by the Committee of the Whole)  
Sponsor: Senator Buzz Thomas (S.B. 402)  
Senator Roger Kahn, M.D. (S.B. 468)  
Committee: Transportation

Date Completed: 1-12-10

### **RATIONALE**

There are over 276 million subscribers to wireless communications services in the United States, according to CTIA – the Wireless Association, and a 2008 study by the National Highway Transportation safety Administration estimated that 11% of drivers are using cell phones at any given daylight time. Although the use of any electronic device or other distraction has been shown to increase the risk of an accident, studies by the Virginia Tech Transportation Institute found that sending and receiving text messages is by far the riskiest behavior, because it diverts the driver's attention from the road for extended periods of time. A driver sending a text message may have his or her eyes off the road for 4.6 seconds over a six-second period, and is 23.2 times more likely to be in a crash or near-crash than while not distracted, according to the studies. In contrast, talking on a cell phone is 1.3 times as risky as driving while not distracted, and dialing a cell phone carries 2.8 times the risk of nondistracted driving.

These findings are considered significant because a growing number of people, particularly young people, are communicating by text messages. Over 135 billion text messages are sent each month, according to CTIA. It has been suggested that the use of text messages while driving should be prohibited.

### **CONTENT**

**Senate Bill 402 (S-3) would amend the Michigan Vehicle Code to prohibit a person from reading, writing, or**

**sending text messages while he or she was operating a moving motor vehicle on a street or highway in the State.**

**Senate Bill 468 (S-4) would amend the Michigan Vehicle Code to prescribe a fine, and prohibit points from being entered on a person's driving record, for a violation of the provisions in Senate Bill 402 (S-3).**

The two bills are tie-barred to one another.

#### **Senate Bill 402 (S-3)**

The bill would prohibit a person from reading, writing, or sending a text message on a wireless two-way communication device, including a wireless phone, that was located in the person's hand or lap, while operating a moving motor vehicle on a street or highway in the State.

("Wireless two-way communication device" would not include a global positioning or navigation system affixed to the vehicle.)

That provision would not prohibit an individual from operating a cellular telephone or other communication device using hands-free technology or from using a cellular telephone or other communication device to do any of the following:

- Report a traffic accident, medical emergency, or serious road hazard.
- Report a situation in which the person believed his or her personal safety was in jeopardy.

- Report or avert the perpetration or potential perpetration of a criminal act against the individual or another person.
- Carry out official duties as a police officer, law enforcement official, member of a paid or volunteer fire department, or emergency vehicle operator.

State or local law enforcement agencies could enforce the bill only as a secondary action when a driver of a motor vehicle had been detained for a suspected violation of another section of the Code.

The bill would supersede all local ordinances regulating the use of a communication device while operating a motor vehicle in motion on a street or highway, although a local unit of government could adopt an ordinance or enforce an existing ordinance substantially corresponding to the bill.

### **Senate Bill 468 (S-4)**

The bill would enact the same provisions as described above, and would add that an individual who violated those provisions would be responsible for a civil infraction, subject to a mandatory fine of \$200 for a first offense and \$500 for a subsequent offense. Points could not be entered on a person's driving record for a violation of those provisions.

Proposed MCL 257.602b (S.B. 402)  
MCL 257.320a et al. (S.B. 468)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Text messaging while driving is a major distraction and is responsible for a growing number of automobile accidents. Although most individuals reportedly recognize the dangers, many users say that they feel a social obligation to read or respond to messages immediately, even while driving. This is particularly true for teenagers and young adults, who are more likely to communicate using text messages and to do so while driving. Reading or writing a text message is a complex task that draws the driver's attention from the roadway. When operating a vehicle, the driver has a responsibility to focus on the road ahead, in

order to be able to respond to unexpected events. Driving while distracted endangers the driver and others, and should not be permitted.

Researchers distinguish between two types of distraction. Cognitive distraction involves preoccupation with mental tasks unrelated to driving. For example, when talking on a cell phone, a driver may be looking at the road but mentally focused on the phone conversation, and therefore may be slower to react to unexpected events. Visual distraction involves looking away from the roadway, such as when dialing a cell phone or tuning the radio. A 2006 study by the Virginia Tech Transportation Institute found that in almost 80% of accidents, the driver was not looking at the road in front of the vehicle immediately before the crash. Text messaging is dangerous because it involves both types of distraction, diverting the driver's cognitive focus while also requiring the driver to look away from the road, sometimes for extended periods of time. This is especially risky at highway speeds: the Virginia Tech Transportation Institute found that text messaging truck drivers may travel the length of a football field without looking at the road, when driving 55 miles per hour. Texting also poses serious problems in city traffic, where vehicles may stop suddenly or traffic signals can change while the driver is looking away. Distracted drivers also pose a serious hazard for bicyclists and pedestrians who, compared with vehicles and motorists, are not as visible on the roadway and are more likely to be seriously injured or killed in a collision. The bills would help to improve road safety by prohibiting a major source of both visual and cognitive distraction.

Many other states already have implemented similar bans. As of November 2009, 19 states had enacted a texting ban that applies to all drivers, and another nine states ban texting by bus drivers and/or new drivers, according to the National Conference of State Legislatures. The Federal government also is considering legislation that would either require or provide incentives to states to ban text messaging. The bills would help bring Michigan's laws into alignment with those of other states.

**Response:** The bills would not go far enough to eliminate driver distractions, prohibiting only text messaging while

allowing the use of cell phones and other devices. Searching for songs on an mp3 player, for example, can draw the driver's attention from the road just as sending a text message does. The bills also would make an exception for hands-free devices, although studies show that those devices still create some distraction for drivers.

### **Opposing Argument**

Under the bills, a law enforcement officer could not stop a driver for text messaging while driving unless he or she was committing some other offense. This provision would tie the hands of those charged with enforcing the law, and would limit the bills' effectiveness. As a preventive measure, law enforcement officers should have the discretion to stop those who are sending text messages, rather than having to wait for an accident or other violation to occur.

**Response:** Making a violation a secondary offense would create a sort of transition period, allowing drivers to become familiar with the new law without being burdened with large fines that many would find difficult to pay. The bills would give law enforcement officers enough latitude to enforce the law, while focusing on drivers who were endangering others. In those situations, the driver could be stopped for reckless driving, for example.

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

#### **Senate Bill 402 (S-3)**

The bill would have no fiscal impact on State or local government.

#### **Senate Bill 468 (S-4)**

The bill would have no fiscal impact on the State. Depending on the number of infractions, \$200 for each first infraction and \$500 for each subsequent infraction would go to the local libraries of the jurisdiction in which the infraction occurred. The number of potential infractions is unknown.

Fiscal Analyst: Joe Carrasco

#### **A0910\s402a**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.