

By: Zaffirini

S.B. No. 67

A BILL TO BE ENTITLED

AN ACT

relating to the use of a wireless communication device while operating a motor vehicle; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Alex Brown Memorial Act.

SECTION 2. Sections 521.161(b) and (c), Transportation Code, are amended to read as follows:

(b) The examination must include:

(1) a test of the applicant's:

(A) vision;

(B) ability to identify and understand highway signs in English that regulate, warn, or direct traffic;

(C) knowledge of the traffic laws of this state;

~~and~~

(D) knowledge of motorists' rights and responsibilities in relation to bicyclists; and

(E) knowledge of the effect of using a wireless communication device, or engaging in other actions that may distract a driver, on the safe or effective operation of a motor vehicle;

(2) a demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the applicant will be licensed to

1 operate; and

2 (3) any additional examination the department finds  
3 necessary to determine the applicant's fitness to operate a motor  
4 vehicle safely.

5 (c) The department shall give each applicant the option of  
6 taking the parts of the examination under Subsections (b)(1)(B),  
7 (C), ~~[and]~~ (D), and (E) in writing in addition to or instead of  
8 through a mechanical, electronic, or other testing method. If the  
9 applicant takes that part of the examination in writing in addition  
10 to another testing method, the applicant is considered to have  
11 passed that part of the examination if the applicant passes either  
12 version of the examination. The department shall inform each  
13 person taking the examination of the person's rights under this  
14 subsection.

15 SECTION 3. Section 545.424(c), Transportation Code, is  
16 amended to read as follows:

17 (c) This section does not apply to~~+~~  
18 ~~[(1)]~~ a person operating a motor vehicle while  
19 accompanied in the manner required by Section 521.222(d)(2) for the  
20 holder of an instruction permit~~[-or~~  
21 ~~[(2) a person licensed by the Federal Communications~~  
22 ~~Commission to operate a wireless communication device or a radio~~  
23 ~~frequency device]~~.

24 SECTION 4. Section 545.425, Transportation Code, is amended  
25 to read as follows:

26 Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE ~~[IN A~~  
27 ~~SCHOOL CROSSING ZONE OR WHILE OPERATING A SCHOOL BUS WITH A MINOR~~

~~PASSENGER~~]; OFFENSE. (a) In this section:

(1) "Hands-free device" means speakerphone capability, ~~or~~ a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a ~~the~~ motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, except to activate or deactivate a function of the wireless communication device or hands-free device. The term includes voice-operated technology and a push-to-talk function.

(2) "Wireless communication device" means a device through which personal wireless services, as defined by 47 U.S.C. Section 332(c)(7)(C)(i), are transmitted. The term does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes ~~[that uses a commercial mobile service, as defined by 47 U.S.C. Section 332].~~

(b) Except as provided by Subsection (c), an operator may not use a wireless communication device while operating a motor vehicle ~~[within a school crossing zone, as defined by Section 541.302, Transportation Code,]~~ unless:

(1) the vehicle is stopped outside a lane of travel; or  
(2) the operator is at least 18 years of age and the wireless communication device is used with a hands-free device.

~~[(b-1) Except as provided by Subsection (b-2), a municipality, county, or other political subdivision that enforces this section shall post a sign that complies with the standards described by this subsection at the entrance to each school~~

~~crossing zone in the municipality, county, or other political subdivision. The department shall adopt standards that:~~

~~[(1) allow for a sign required to be posted under this subsection to be attached to an existing sign at a minimal cost, and~~

~~[(2) require that a sign required to be posted under this subsection inform an operator that:~~

~~[(A) the use of a wireless communication device is prohibited in the school crossing zone; and~~

~~[(B) the operator is subject to a fine if the operator uses a wireless communication device in the school crossing zone.~~

~~[(b-2) A municipality, county, or other political subdivision that by ordinance or rule prohibits the use of a wireless communication device while operating a motor vehicle throughout the jurisdiction of the political subdivision is not required to post a sign as required by Subsection (b-1) if the political subdivision:~~

~~[(1) posts signs that are located at each point at which a state highway, U.S. highway, or interstate highway enters the political subdivision and that state:~~

~~[(A) that an operator is prohibited from using a wireless communication device while operating a motor vehicle in the political subdivision; and~~

~~[(B) that the operator is subject to a fine if the operator uses a wireless communication device while operating a motor vehicle in the political subdivision; and~~

~~[(2) subject to all applicable United States~~

~~Department of Transportation Federal Highway Administration rules, posts a message that complies with Subdivision (1) on any dynamic message sign operated by the political subdivision located on a state highway, U.S. highway, or interstate highway in the political subdivision.~~

~~[(b-3) A sign posted under Subsection (b-2)(1) must be readable to an operator traveling at the applicable speed limit.~~

~~[(b-4) The political subdivision shall pay the costs associated with the posting of signs under Subsection (b-2).]~~

(c) An operator may not use a wireless communication device while operating a passenger bus with a minor passenger on the bus unless the passenger bus is stopped outside a lane of travel.

(d) It is an affirmative defense to prosecution of an offense under this section that ~~+~~

~~[(1)]~~ the wireless communication device was used to make an emergency call to:

(1) ~~[(A)]~~ an emergency response service, including a rescue, emergency medical, or hazardous material response service;

(2) ~~[(B)]~~ a hospital;

(3) ~~[(C)]~~ a fire department;

(4) ~~[(D)]~~ a health clinic;

(5) ~~[(E)]~~ a medical doctor's office;

(6) ~~[(F)]~~ an individual to administer first aid treatment; or

(7) ~~[(G)]~~ a police department ~~[, or~~

~~[(2) a sign required by Subsection (b-1) was not posted at the entrance to the school crossing zone at the time of an~~

~~offense committed in the school crossing zone].~~

~~[(d-1) The affirmative defense available in Subsection (d)(2) is not available for an offense under Subsection (b) committed in a school crossing zone located in a municipality, county, or other political subdivision that is in compliance with Subsection (b-2).]~~

(e) Subsections (b) and (c) do ~~[This section does]~~ not apply to:

(1) an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity; or

(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device during an emergency.

(f) Subsection (b) does not apply to an operator of a commercial motor vehicle who uses a wireless communication device while acting in the scope of the operator's employment and the use is allowed under federal motor carrier safety regulations, as defined by Section 644.001.

(g) This ~~[(f) Except as provided by Subsection (b-2), this]~~ section preempts all local ordinances, rules, or regulations ~~[that are inconsistent with specific provisions of this section]~~ adopted by a political subdivision of this state relating to the use of a wireless communication device by the operator of a motor vehicle.

(h) An offense under this section is a misdemeanor punishable by a fine of at least \$25 and not more than \$99 unless it is shown on the trial of the offense that the defendant has been

1 previously convicted at least one time of an offense under this  
2 section, in which event the offense is punishable by a fine of at  
3 least \$100 and not more than \$200.

4 (i) The Texas Department of Transportation shall post a sign  
5 at each point at which an interstate highway or United States  
6 highway enters this state that informs an operator that:

7 (1) the use of a portable wireless communication  
8 device while operating a motor vehicle is prohibited in this state;  
9 and

10 (2) the operator is subject to a fine if the operator  
11 uses a portable wireless communication device while operating a  
12 motor vehicle in this state.

13 SECTION 5. Sections 545.424(a), (b), and (f) and 545.4252,  
14 Transportation Code, are repealed.

15 SECTION 6. The changes in law made by this Act to Chapter  
16 545, Transportation Code, apply only to an offense committed on or  
17 after the effective date of this Act. An offense committed before  
18 the effective date of this Act is governed by the law in effect on  
19 the date the offense was committed, and the former law is continued  
20 in effect for that purpose. For purposes of this section, an  
21 offense was committed before the effective date of this Act if any  
22 element of the offense occurred before that date.

23 SECTION 7. This Act takes effect September 1, 2017.