

By: Craddick, Cook, Lucio III,
Davis of Dallas, Wu, et al.

H.B. No. 62

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; modifying existing criminal penalties.

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

1 motor vehicle of the type that the applicant will be licensed to
2 operate; and

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

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

16 SECTION 3. Section 543.004(a), Transportation Code, is
17 amended to read as follows:

18 (a) An officer shall issue a written notice to appear if:

19 (1) the offense charged is:

20 (A) speeding;

21 (B) the use of a wireless communication device
22 under Section 545.4251; or

23 (C) a violation of the open container law,
24 Section 49.031 [~~49.03~~], Penal Code; and

25 (2) the person makes a written promise to appear in
26 court as provided by Section 543.005.

27 SECTION 4. Section 545.424, Transportation Code, is amended

1 by amending Subsections (a), (b), and (c) and adding Subsection (g)
2 to read as follows:

3 (a) A person under 18 years of age may not operate a motor
4 vehicle while using a wireless communication [~~communications~~]
5 device, except in case of emergency. This subsection does not apply
6 to a person licensed by the Federal Communications Commission while
7 operating a radio frequency device other than a wireless
8 communication device.

9 (b) A person under 17 years of age who holds a restricted
10 motorcycle license or moped license may not operate a motorcycle or
11 moped while using a wireless communication [~~communications~~]
12 device, except in case of emergency. This subsection does not apply
13 to a person licensed by the Federal Communications Commission while
14 operating a radio frequency device other than a wireless
15 communication device.

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

23 (g) An offense under Subsection (a) or (b) is a misdemeanor
24 punishable by a fine of at least \$25 and not more than \$99 unless it
25 is shown on the trial of the offense that the defendant has been
26 previously convicted at least one time of an offense under either
27 subsection, in which event the offense is punishable by a fine of at

1 least \$100 and not more than \$200.

2 SECTION 5. The heading to Section 545.425, Transportation
3 Code, is amended to read as follows:

4 Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE IN A
5 SCHOOL CROSSING ZONE OR WHILE OPERATING A SCHOOL BUS WITH A MINOR
6 PASSENGER; POLITICAL SUBDIVISION SIGN REQUIREMENTS; OFFENSE.

7 SECTION 6. Section 545.425(a)(1), Transportation Code, is
8 amended to read as follows:

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

18 SECTION 7. Section 545.425(b-2), Transportation Code, is
19 amended to read as follows:

20 (b-2) A municipality, county, or other political
21 subdivision that by ordinance or rule prohibits the use of a
22 wireless communication device while operating a motor vehicle,
23 including a prohibition that contains an exception for the use of a
24 wireless communication device with a hands-free device, throughout
25 the jurisdiction of the political subdivision is not required to
26 post a sign as required by Subsection (b-1) and shall ~~if the~~
27 ~~political subdivision~~]:

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

4 (A) that an operator is prohibited from using a
5 wireless communication device while operating a motor vehicle in
6 the political subdivision, and whether use of a wireless
7 communication device with a hands-free device is allowed in the
8 political subdivision; and

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

12 (2) subject to all applicable United States Department
13 of Transportation Federal Highway Administration rules, post
14 [~~posts~~] a message that complies with Subdivision (1) on any dynamic
15 message sign operated by the political subdivision located on a
16 state highway, U.S. highway, or interstate highway in the political
17 subdivision.

18 SECTION 8. Subchapter I, Chapter 545, Transportation Code,
19 is amended by adding Section 545.4251 to read as follows:

20 Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION
21 DEVICE FOR ELECTRONIC MESSAGING; OFFENSE. (a) In this section:

22 (1) "Electronic message" means data that is read from
23 or entered into a wireless communication device for the purpose of
24 communicating with another person.

25 (2) "Wireless communication device" has the meaning
26 assigned by Section 545.425.

27 (b) An operator commits an offense if the operator uses a

1 portable wireless communication device to read, write, or send an
2 electronic message while operating a motor vehicle unless the
3 vehicle is stopped.

4 (c) It is an affirmative defense to prosecution of an
5 offense under this section that the operator used a portable
6 wireless communication device:

7 (1) in conjunction with a hands-free device, as
8 defined by Section 545.425;

9 (2) to report illegal activity, summon emergency help,
10 or enter information into a software application that provides
11 information relating to traffic and road conditions to users of the
12 application;

13 (3) to read an electronic message that the person
14 reasonably believed concerned an emergency; or

15 (4) that was permanently or temporarily affixed to the
16 vehicle to relay information in the course of the operator's
17 occupational duties between the operator and:

18 (A) a dispatcher; or

19 (B) a digital network or software application
20 service.

21 (d) Subsection (b) does not apply to:

22 (1) an operator of an authorized emergency or law
23 enforcement vehicle using a portable wireless communication device
24 while acting in an official capacity; or

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

1 (e) An offense under this section is a misdemeanor
2 punishable by a fine of at least \$25 and not more than \$99 unless it
3 is shown on the trial of the offense that the defendant has been
4 previously convicted at least one time of an offense under this
5 section, in which event the offense is punishable by a fine of at
6 least \$100 and not more than \$200.

7 (e-1) Notwithstanding Subsection (e), the total amount
8 imposed by the court, including the fine and associated court costs
9 and other fees, for an offense under this section may not exceed:

10 (1) \$99 for a first offense under this section; and

11 (2) \$200 for a second or subsequent offense under this
12 section.

13 (f) The Texas Department of Transportation shall post a sign
14 at each point at which an interstate highway or United States
15 highway enters this state that informs an operator that:

16 (1) the use of a portable wireless communication
17 device for electronic messaging while operating a motor vehicle is
18 prohibited in this state; and

19 (2) the operator is subject to a fine if the operator
20 uses a portable wireless communication device for electronic
21 messaging while operating a motor vehicle in this state.

22 (g) A peace officer who stops a motor vehicle for an alleged
23 violation of this section may not take possession of or otherwise
24 inspect a portable wireless communication device in the possession
25 of the operator unless authorized by the Code of Criminal
26 Procedure, the Penal Code, or other law.

27 (h) If conduct constituting an offense under this section

1 also constitutes an offense under a municipal ordinance, the actor
2 may be prosecuted only under this section.

3 SECTION 9. Section 708.052, Transportation Code, is amended
4 by adding Subsection (e-1) to read as follows:

5 (e-1) Notwithstanding Subsection (b), the department may
6 not assign points to a person's license if the offense of which the
7 person was convicted is the offense of using a portable wireless
8 communication device for electronic messaging as described by
9 Section 545.4251.

10 SECTION 10. The changes in law made by this Act to Section
11 543.004 and Chapter 545, Transportation Code, apply only to an
12 offense committed on or after the effective date of this Act. An
13 offense committed before the effective date of this Act is governed
14 by the law in effect on the date the offense was committed, and the
15 former law is continued in effect for that purpose. For purposes of
16 this section, an offense was committed before the effective date of
17 this Act if any element of the offense occurred before that date.

18 SECTION 11. This Act takes effect September 1, 2017.