

By: Zaffirini

S.B. No. 41

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the use of a wireless communication device while
3 operating a motor vehicle.

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

5 SECTION 1. This Act may be cited as Allie's Way.

6 SECTION 2. Section 543.004(a), Transportation Code, is
7 amended to read as follows:

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

9 (1) the offense charged is:

10 (A) speeding;

11 (B) the use of a wireless communication device
12 under Section 545.4251 punishable by a fine only; or

13 (C) a violation of the open container law,
14 Section 49.031, Penal Code; and

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

17 SECTION 3. The heading to Section 545.4251, Transportation
18 Code, is amended to read as follows:

19 Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION
20 DEVICE WHILE OPERATING MOTOR VEHICLE [~~FOR ELECTRONIC MESSAGING~~];
21 OFFENSE.

22 SECTION 4. Section 545.4251, Transportation Code, is
23 amended by amending Subsections (a), (b), (c), (d), (h), and (j) and
24 adding Subsection (c-1) to read as follows:

1 (a) In this section:

2 (1) "Hands-free device" means speakerphone
3 capability, a telephone attachment, or another function or other
4 piece of equipment, regardless of whether permanently installed in
5 or on a wireless communication device or in a motor vehicle, that
6 allows use of the wireless communication device without use of
7 either of the operator's hands, except to activate or deactivate a
8 function of the wireless communication device or hands-free device
9 with a swipe or tap of the operator's finger. The term includes
10 voice-operated technology and a push-to-talk function [~~"Electronic~~
11 ~~message" means data that is read from or entered into a wireless~~
12 ~~communication device for the purpose of communicating with another~~
13 ~~person~~].

14 (2) "Wireless communication device" means a device
15 through which personal wireless services, as defined by 47 U.S.C.
16 Section 332(c)(7)(C)(i), are transmitted. The term does not include
17 a device that is only a global navigation satellite system receiver
18 used for positioning, emergency notification, or navigation
19 purposes [~~has the meaning assigned by Section 545.425~~].

20 (b) An operator commits an offense if the operator uses a
21 portable wireless communication device [~~to read, write, or send an~~
22 ~~electronic message~~] while operating a motor vehicle unless the
23 vehicle is stopped outside a lane of travel. To be prosecuted, the
24 behavior must be committed in the presence of or within the view of
25 a peace officer or established by other evidence.

26 (c) It is an affirmative defense to prosecution of an
27 offense under this section that the operator used a portable

1 wireless communication device:

2 (1) in conjunction with a hands-free device~~[, as~~
3 ~~defined by Section 545.425]~~;

4 (2) to contact emergency services; or

5 (3) that was mounted in or on the vehicle solely to
6 continuously record or broadcast video inside or outside of the
7 vehicle [~~to navigate using a global positioning system or~~
8 ~~navigation system;~~

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

13 [~~(4) to read an electronic message that the person~~
14 ~~reasonably believed concerned an emergency;~~

15 [~~(5) that was permanently or temporarily affixed to~~
16 ~~the 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; or~~

21 [~~(6) to activate a function that plays music].~~

22 (c-1) The affirmative defense in Subsection (c)(1) is not
23 available for an offense under Subsection (b) committed by a person
24 under 18 years of age or by a person operating a school bus with a
25 minor passenger on the bus.

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

27 (1) an operator of an authorized emergency or law

1 enforcement vehicle using a portable wireless communication device
2 while acting in an official capacity; or

3 (2) an operator of a commercial motor vehicle, other
4 than a school bus with a minor passenger on the bus, who uses a
5 portable wireless communication device while acting in the scope of
6 the operator's employment and the use is allowed under federal
7 motor carrier safety regulations, as defined by Section 644.001 [~~an~~
8 ~~operator who is licensed by the Federal Communications Commission~~
9 ~~while operating a radio frequency device other than a portable~~
10 ~~wireless communication device~~].

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

14 (1) the use of a portable wireless communication
15 device [~~for electronic messaging~~] while operating a motor vehicle
16 is prohibited in this state; and

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

20 (j) This section preempts all local ordinances, rules, or
21 other regulations adopted by a local authority [~~political~~
22 ~~subdivision~~] relating to the use of a portable wireless
23 communication device by the operator of a motor vehicle [~~to read,~~
24 ~~write, or send an electronic message~~].

25 SECTION 5. The following provisions of the Transportation
26 Code are repealed:

27 (1) Sections 545.424(a), (b), (f), and (g);

1 (2) Section 545.425; and

2 (3) Section 545.4252.

3 SECTION 6. The changes in law made by this Act apply only to
4 an offense committed on or after the effective date of this Act. An
5 offense committed before the effective date of this Act is governed
6 by the law in effect on the date the offense was committed, and the
7 former law is continued in effect for that purpose. For purposes of
8 this section, an offense was committed before the effective date of
9 this Act if any element of the offense occurred before that date.

10 SECTION 7. This Act takes effect September 1, 2023.