

BILL ANALYSIS

C.S.H.B. 63
By: Craddick
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent studies have found that drivers using a wireless communication device to write a text message, e-mail message, or instant message are distracted to a level of impairment equal to that of intoxicated drivers, which means distracted drivers are considerably more likely to have an accident than undistracted drivers.

While common sense and personal responsibility are major components in the effort to make Texas roads safer, interested parties contend that a statutory requirement would greatly aid the cause and that other well-known efforts to improve public safety by changing driving laws, such as Texas' seat belt law, were successful because they included both criminalization of the risky behavior and an educational campaign to inform drivers about the risk.

It is reported by national research organizations that approximately 40 states have banned text messaging for all drivers. In Texas, however, drivers are not currently prohibited in most situations from using a wireless communication device to read, write, or send a text-based communication. In the absence of a statewide policy, several cities have opted to enact various local ordinances to ban texting while driving. Unfortunately, these well-intentioned local laws have resulted in some measure of confusion because of the inconsistency of their application across the state.

C.S.H.B. 63 seeks to remedy this situation by implementing a statewide ban on texting while driving as a common sense safety measure that could save lives, reduce the risk of accidents, reduce traffic congestion, and generate additional revenue for the state in the form of fines assessed against drivers who break the law by texting while driving.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 63 amends the Transportation Code to specify as a misdemeanor offense punishable by a fine of not more than \$100 the operation of a vehicle by a person under 18 years of age while using a wireless communications device, except in case of emergency, or the operation of a motorcycle or moped by a person under 17 years of age while using a wireless communications device, except in case of emergency, if the person holds a restricted motorcycle license or moped license. The bill enhances the punishment to a fine of not more than \$200 if it is shown on the trial for such an offense that the defendant has been previously convicted at least one time of an offense relating to the operation of a vehicle by a person under 18 years of age.

C.S.H.B. 63 creates a misdemeanor offense for an operator to use a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped and specifies that such an offense is punishable by a

fine of not more than \$100 unless it is shown on the trial of the offense that the defendant has been previously convicted at least one time of such an offense, in which event the offense is punishable by a fine of not more than \$200. The bill establishes a defense to prosecution for such an offense if the operator used a handheld wireless communication device to read, select, or enter a telephone number or name for the purpose of making a telephone call; in conjunction with voice-operated technology, a push-to-talk function, or a hands-free device; to navigate using a global positioning system or navigation service; to report illegal activity or summon emergency help; or if the handheld wireless communication device was affixed to the vehicle and was used by the operator to relay information between the operator and a dispatcher in the course of the operator's occupational duties. The bill exempts from the application of the offense an operator of an authorized emergency or law enforcement vehicle using a wireless communication device while acting in an official capacity or an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a handheld wireless communication device. The bill specifies that its provisions preempt all local ordinances, rules, or regulations that are inconsistent with specific provisions of the bill adopted by a political subdivision of this state relating to using a wireless communication device to read, write, or send a text-based communication while operating a motor vehicle.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 63 may differ from the original in nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantive differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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

No equivalent provision.

SECTION 2. The heading to Section 545.425, Transportation Code, is amended.

SECTION 3. Section 545.425(a)(1), Transportation Code, is amended.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 545.424, Transportation Code, is amended by adding Subsection (g) to read as follows:
(g) An offense under Subsection (a) or (b) is a misdemeanor punishable by a fine of not more than \$100 unless it is shown on the trial of the offense that the defendant has been previously convicted at least one time of an offense under this section, in which event the offense is punishable by a fine of not more than \$200.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 4. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.4251 to read as follows:

Sec. 545.4251. USE OF WIRELESS COMMUNICATION DEVICE TO SEND TEXT-BASED COMMUNICATIONS; OFFENSE. (a) In this section:

(1) "Handheld wireless communication device" means a wireless communication device, as defined by Section 545.425, that is portable. The term does not include:

(A) a citizens band radio or citizens band radio hybrid; or

(B) a commercial two-way radio communication device.

(2) "Text-based communication" means a communication that is designed or intended to be composed with at least one hand on a handheld wireless communication device and that is transmitted between wireless communication devices for the purpose of manually communicating in a nonspoken manner with another person in a written medium. The term includes:

(A) a text message;

(B) an instant message;

(C) an e-mail; or

(D) another type of electronic message.

(b) An operator commits an offense if the operator uses a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped.

(c) It is a defense to prosecution under Subsection (b) that:

(1) the operator used a handheld wireless communication device:

(A) to read, select, or enter a telephone number or name for the purpose of making a telephone call;

(B) in conjunction with voice-operated technology, a push-to-talk function, or a hands-free device, as defined by Section 545.425; or

(C) to navigate using a global positioning system or navigation service; or

(2) the handheld wireless communication device:

(A) was used by the operator to relay information between the operator and a dispatcher in the course of the operator's occupational duties; and

SECTION 5. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.4251 to read as follows:

Sec. 545.4251. USE OF WIRELESS COMMUNICATION DEVICE TO SEND TEXT-BASED COMMUNICATIONS; OFFENSE. (a) In this section:

(1) "Handheld wireless communication device" means a wireless communication device, as defined by Section 545.425, that is portable.

(2) "Text-based communication" means a communication that is designed or intended to be composed with at least one hand on a handheld wireless communication device and that is transmitted between wireless communication devices for the purpose of manually communicating in a nonspoken manner with another person in a written medium. The term includes:

(A) a text message;

(B) an instant message;

(C) an e-mail; or

(D) another type of electronic message.

(b) An operator commits an offense if the operator uses a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped.

(c) It is a defense to prosecution under Subsection (b) that:

(1) the operator used a handheld wireless communication device:

(A) to read, select, or enter a telephone number or name for the purpose of making a telephone call;

(B) in conjunction with voice-operated technology, a push-to-talk function, or a hands-free device, as defined by Section 545.425;

(C) to navigate using a global positioning system or navigation service; or

(D) to report illegal activity or summon emergency help; or

(2) the handheld wireless communication device:

(A) was used by the operator to relay information between the operator and a dispatcher in the course of the operator's occupational duties; and

(B) was affixed to the vehicle.
(d) It is an exception to the application of Subsection (b) that the operator is:
(1) an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity;
(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a handheld wireless communication device; or
(3) an operator of a moving motor vehicle using a handheld wireless communication device to report illegal activity or summon emergency help.
(e) Except as provided by Subsection (f), 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.
(f) A political subdivision of this state may adopt a local ordinance, rule, or regulation relating to an operator using a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle that is more stringent than this section.

SECTION 5. This Act takes effect September 1, 2013.

(B) was affixed to the vehicle.
(d) Subsection (b) does not apply to:
(1) an operator of an authorized emergency or law enforcement 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 handheld wireless communication device.
(e) 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 using a wireless communication device to read, write, or send a text-based communication while operating a motor vehicle.
(f) An offense under this section is a misdemeanor punishable by a fine of not more than \$100 unless it is shown on the trial of the offense that the defendant has been previously convicted at least one time of an offense under this section, in which event the offense is punishable by a fine of not more than \$200.

SECTION 6. Same as introduced version.