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H.B. No. 63

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation of an offense for use of a handheld
3 wireless communication device for text-based communication while
4 operating a motor vehicle.

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

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

8 SECTION 2. Section 545.424, Transportation Code, is amended
9 by adding Subsection (g) to read as follows:

10 (g) An offense under Subsection (a) or (b) is a misdemeanor
11 punishable by a fine of not more than \$100 unless it is shown on the
12 trial of the offense that the defendant has been previously
13 convicted at least one time of an offense under this section, in
14 which event the offense is punishable by a fine of not more than
15 \$200.

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

18 Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE
19 GENERALLY; OFFENSE.

20 SECTION 4. Section 545.425(a)(1), Transportation Code, is
21 amended to read as follows:

22 (1) "Hands-free device" means speakerphone
23 capability, ~~or~~ a telephone attachment, or another function or
24 other piece of equipment, regardless of whether permanently

1 installed in or on a wireless communication device or in a [the]
2 motor vehicle, that allows use of the wireless communication device
3 without use of either of the operator's hands, except to activate or
4 deactivate a function of the wireless communication device or
5 hands-free device.

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

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

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

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

19 (A) a text message;

20 (B) an instant message;

21 (C) an e-mail; or

22 (D) another type of electronic message.

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

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

1 that:

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

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

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

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

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

13 (E) to read a text-based communication:

14 (i) that the person reasonably believes
15 concerns an emergency; or

16 (ii) that concerns an emergency regardless
17 of the person's belief; or

18 (2) the handheld wireless communication device:

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

22 (B) was affixed to the vehicle.

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

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

27 (2) an operator who is licensed by the Federal

1 Communications Commission while operating a radio frequency device
2 other than a handheld wireless communication device.

3 (e) This section preempts all local ordinances, rules, or
4 regulations adopted by a political subdivision of this state
5 relating to using a wireless communication device while operating a
6 motor vehicle.

7 (e-1) Subsection (e) does not apply to a local ordinance,
8 rule, or regulation adopted by a political subdivision of this
9 state before September 1, 2011.

10 (f) An offense under this section is a misdemeanor
11 punishable by a fine of not more than \$100 unless it is shown on the
12 trial of the offense that the defendant has been previously
13 convicted at least one time of an offense under this section, in
14 which event the offense is punishable by a fine of not more than
15 \$200.

16 (g) The Texas Department of Transportation shall post a sign
17 at each point at which an interstate highway or United States
18 highway enters this state that informs an operator that:

19 (1) the use of a handheld wireless communication
20 device to read, write, or send a text-based communication while
21 operating a motor vehicle is prohibited in this state; and

22 (2) the operator is subject to a fine if the operator
23 uses a handheld wireless communication device to read, write, or
24 send a text-based communication while operating a motor vehicle in
25 this state.

26 (h) A peace officer who stops a motor vehicle for an alleged
27 violation of this section may not, without the consent of the

1 operator, take possession of or otherwise inspect a wireless
2 communication device in the possession of the operator solely based
3 on a violation of this section.

4 (i) A telecommunications provider may provide records
5 related to the commission of an alleged offense under this section
6 only as required by a search warrant issued under Chapter 18, Code
7 of Criminal Procedure.

8 SECTION 6. This Act takes effect September 1, 2013.