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et al.

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A BILL TO BE ENTITLED

1 AN ACT
2 relating to the use of a portable wireless communication device
3 while operating a motor vehicle; creating a criminal offense;
4 modifying existing criminal penalties.

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. Sections [521.161](#)(b) and (c), Transportation
9 Code, are amended to read as follows:

10 (b) The examination must include:

11 (1) a test of the applicant's:

12 (A) vision;

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

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

16 [~~and~~]

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

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

23 (2) a demonstration of the applicant's ability to
24 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 545.424, Transportation Code, is amended
17 by adding Subsection (g) to read as follows:

18 (g) An offense under Subsection (a) or (b) is a misdemeanor
19 punishable by a fine of at least \$25 and not more than \$99 unless it
20 is shown on the trial of the offense that the defendant has been
21 previously convicted at least one time of an offense under this
22 section, in which event the offense is punishable by a fine of at
23 least \$100 and not more than \$200.

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

26 (1) "Hands-free device" means speakerphone
27 capability, ~~[or]~~ a telephone attachment, or another function or

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

7 SECTION 5. Subchapter I, Chapter 545, Transportation Code,
8 is amended by adding Sections 545.4251 and 545.4253 to read as
9 follows:

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

13 (1) "Text-based communication" means data, other than
14 a telephone number or global positioning system data, that is read
15 from or manually entered into a wireless communication device for
16 the purpose of communicating with another person, including an SMS
17 text, e-mail, or instant message.

18 (2) "Wireless communication device" has the meaning
19 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 a
22 text-based communication while operating a motor vehicle unless the
23 vehicle is stopped.

24 (c) It is a defense to prosecution under Subsection (b) that
25 the operator used a portable wireless communication device:

26 (1) in conjunction with voice-operated technology, a
27 push-to-talk function, or a hands-free device, as defined by

1 Section 545.425;

2 (2) to report illegal activity or summon emergency
3 help;

4 (3) to read a text-based communication that the person
5 reasonably believed concerned an emergency; or

6 (4) that was affixed to the vehicle to relay
7 information between the operator and a dispatcher in the course of
8 the operator's occupational duties.

9 (d) Subsection (b) does not apply to an operator who is
10 licensed by the Federal Communications Commission while operating a
11 radio frequency device other than a portable wireless communication
12 device.

13 (e) This section preempts all local ordinances, rules, or
14 other regulations adopted by a political subdivision relating to
15 the use of a portable wireless communication device by the operator
16 of a motor vehicle to read, write, or send a text-based
17 communication.

18 (f) A political subdivision may by ordinance, rule, or other
19 regulation prohibit or regulate the use of a portable wireless
20 communication device, other than to read, write, or send a
21 text-based communication, while operating a motor vehicle.

22 (g) An offense under this section is a misdemeanor
23 punishable by a fine of at least \$25 and not more than \$99 unless it
24 is shown on the trial of the offense that the defendant has been
25 previously convicted at least one time of an offense under this
26 section, in which event the offense is punishable by a fine of at
27 least \$100 and not more than \$200.

1 (h) A peace officer who stops a motor vehicle for an alleged
2 violation of this section may not take possession of or otherwise
3 inspect a portable wireless communication device in the possession
4 of the operator unless authorized by the Code of Criminal
5 Procedure, the Penal Code, or other law.

6 Sec. 545.4253. NOTIFICATION OF STATE LAWS ON USE OF
7 WIRELESS COMMUNICATION DEVICE; SIGNS REQUIRED. (a) In this
8 section:

9 (1) "Wireless communication device" has the meaning
10 assigned by Section 545.425.

11 (2) "Rest area" means public real property designated
12 as a rest area, comfort station, picnic area, roadside park, or
13 scenic overlook by the Texas Department of Transportation.

14 (b) The Texas Department of Transportation shall post a sign
15 providing notice to an operator of a motor vehicle of the laws that
16 apply to the use of a wireless communication device while operating
17 a motor vehicle in this state:

18 (1) at each point at which an interstate highway or
19 United States highway enters this state;

20 (2) in a prominent location at each rest area; and

21 (3) at each exit point from a public airport on a road
22 maintained by the Texas Department of Transportation.

23 (c) The Texas Department of Transportation shall by rule
24 adopt standards for signs described by Subsection (b).

25 (d) A sign posted under Subsection (b) must inform an
26 operator of a motor vehicle that:

27 (1) the use of a portable wireless communication

1 device to read, write, or send a text-based communication while
2 operating a motor vehicle is prohibited in this state;

3 (2) the use of a wireless communication device while
4 operating a motor vehicle in a school crossing zone or on school
5 property is prohibited in this state under certain circumstances;

6 (3) additional restrictions on the use of a wireless
7 communication device while operating a motor vehicle may apply in
8 political subdivisions; and

9 (4) the operator is subject to a fine if the operator
10 uses a wireless communication device in violation of a state or
11 local law.

12 (e) The Texas Department of Transportation shall include on
13 any state highway map published by that department the information
14 described by Subsection (d).

15 SECTION 6. Section 708.052, Transportation Code, is amended
16 by adding Subsection (e-1) to read as follows:

17 (e-1) Notwithstanding Subsection (b), the department may
18 not assign points to a person's license if the offense of which the
19 person was convicted is the offense of using a portable wireless
20 communication device to send a text-based communication as
21 described by Section 545.4251.

22 SECTION 7. The changes in law made by this Act to Chapter
23 545, Transportation Code, apply only to an offense committed on or
24 after the effective date of this Act. An offense committed before
25 the effective date of this Act is governed by the law in effect on
26 the date the offense was committed, and the former law is continued
27 in effect for that purpose. For purposes of this section, an

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1 offense was committed before the effective date of this Act if any
2 element of the offense occurred before that date.

3 SECTION 8. This Act takes effect September 1, 2015.