

By: Craddick, Cook, Lucio III, Harless, Wu,
et al.

H.B. No. 80

Substitute the following for H.B. No. 80:

By: Pickett

C.S.H.B. No. 80

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 Section 545.4251 to read as follows:

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

12 (1) "Text-based communication" means data that is read
13 from or manually entered into a wireless communication device,
14 including an SMS text, e-mail, instant message, or other form of
15 electronic data retrieval or electronic data communication.

16 (2) "Wireless communication device" has the meaning
17 assigned by Section 545.425.

18 (b) An operator commits an offense if the operator uses a
19 portable wireless communication device to read, write, or send a
20 text-based communication while operating a motor vehicle unless the
21 vehicle is stopped and is outside a lane of travel.

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

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

26 (2) 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 (3) to navigate using a global positioning system or
3 navigation service;

4 (4) to report illegal activity or summon emergency
5 help;

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

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

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

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

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

18 (e) This section does not preempt a local ordinance, rule,
19 or regulation adopted by a political subdivision relating to the
20 use of a portable wireless communication device by the operator of a
21 motor vehicle that is consistent with or more stringent than the
22 provisions of this section.

23 (f) An offense under this section 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 this
27 section, in which event the offense is punishable by a fine of at

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

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

5 (1) the use of a portable wireless communication
6 device to read, write, or send a text-based communication while
7 operating a motor vehicle is prohibited in this state; and

8 (2) the operator is subject to a fine if the operator
9 uses a portable wireless communication device to read, write, or
10 send a text-based communication while operating a motor vehicle in
11 this state.

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

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

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

24 SECTION 7. The changes in law made by this Act to Sections
25 545.424 and 545.425, Transportation Code, apply only to an offense
26 committed on or after the effective date of this Act. An offense
27 committed before the effective date of this Act is governed by the

1 law in effect on the date the offense was committed, and the former
2 law is continued in effect for that purpose. For purposes of this
3 section, an offense was committed before the effective date of this
4 Act if any element of the offense occurred before that date.

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