

By: Uresti

H.B. No. 117

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the use of a wireless communication device while  
3 operating a motor vehicle; amending provisions subject to a  
4 criminal penalty.

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

6 SECTION 1. The heading to Section 545.4251, Transportation  
7 Code, as effective September 1, 2017, is amended to read as follows:

8 Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION  
9 DEVICE WHILE OPERATING MOTOR VEHICLE [~~FOR ELECTRONIC MESSAGING~~];  
10 OFFENSE.

11 SECTION 2. Section 545.4251, Transportation Code, as  
12 effective September 1, 2017, is amended by amending Subsections  
13 (a), (b), (c), (h), and (j) and adding Subsection (c-1) to read as  
14 follows:

15 (a) In this section:

16 (1) "Hands-free device" means speakerphone  
17 capability, a telephone attachment, or another function or other  
18 piece of equipment, regardless of whether permanently installed in  
19 or on a wireless communication device or in a motor vehicle, that  
20 allows use of the wireless communication device without use of  
21 either of the operator's hands, except to activate or deactivate a  
22 function of the wireless communication device or hands-free device.  
23 The term includes voice-operated technology and a push-to-talk  
24 function [~~"Electronic message" means data that is read from or~~

1 ~~entered into a wireless communication device for the purpose of~~  
2 ~~communicating with another person].~~

3 (2) "Wireless communication device" means a device  
4 that uses a commercial mobile service, as defined by 47  
5 U.S.C. Section 332 [~~has the meaning assigned by Section 545.425~~].

6 (b) An operator commits an offense if the operator uses a  
7 portable wireless communication device [~~to read, write, or send an~~  
8 ~~electronic message~~] while operating a motor vehicle unless the  
9 vehicle is stopped. To be prosecuted, the behavior must be  
10 committed in the presence of or within the view of a peace officer  
11 or established by other evidence.

12 (c) Except as provided by Subsection (c-1), it [~~It~~] is an  
13 affirmative defense to prosecution of an offense under this section  
14 that the operator used a portable wireless communication device:

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

17 (2) to navigate using a global positioning system or  
18 navigation system;

19 (3) to report illegal activity, summon emergency help,  
20 or enter information into a software application that provides  
21 information relating to traffic and road conditions to users of the  
22 application;

23 (4) to read a [~~an electronic~~] message that the person  
24 reasonably believed concerned an emergency;

25 (5) that was permanently or temporarily affixed to the  
26 vehicle to relay information in the course of the operator's  
27 occupational duties between the operator and:

1 (A) a dispatcher; or  
2 (B) a digital network or software application  
3 service; or

4 (6) to activate a function that plays audio content  
5 ~~[music]~~.

6 (c-1) The affirmative defenses in Subsections (c)(1), (2),  
7 (4), (5), and (6) are not available for an offense under Subsection  
8 (b) committed by a person under 18 years of age or by a person  
9 operating a school bus with a minor passenger on the bus.

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

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

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

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

24 SECTION 3. Sections 545.424(a), (b), (f), and (g), 545.425,  
25 and 545.4252, Transportation Code, as effective September 1, 2017,  
26 are repealed.

27 SECTION 4. The changes in law made by this Act apply only to

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

7 SECTION 5. This Act takes effect September 1, 2017, if it  
8 receives a vote of two-thirds of all the members elected to each  
9 house, as provided by Section 39, Article III, Texas Constitution.  
10 If this Act does not receive the vote necessary for effect on that  
11 date, this Act takes effect on the 91st day after the last day of the  
12 legislative session.