

By: Zaffirini

S.B. No. 39

A BILL TO BE ENTITLED

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

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

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

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

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

14 (a) In this section:

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

1 ~~communicating with another person~~].

2 (2) "Wireless communication device" means a device
3 through which personal wireless services, as defined by 47 U.S.C.
4 Section 332(c)(7)(C)(i), are transmitted. The term does not include
5 a global navigation satellite system receiver used for positioning,
6 emergency notification, or navigation purposes [~~has the meaning~~
7 ~~assigned by Section 545.425~~].

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

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

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

19 (2) to navigate using a global positioning system or
20 navigation system;

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

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

27 (5) that was permanently or temporarily affixed to the

1 vehicle to relay information in the course of the operator's
2 occupational duties between the operator and:

3 (A) a dispatcher; or

4 (B) a digital network or software application
5 service; or

6 (6) to activate a function that plays music.

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

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 during an
18 emergency; or

19 (3) an operator of a commercial motor vehicle, other
20 than a school bus with a minor passenger on the bus, who uses a
21 portable wireless communication device while acting in the scope of
22 the operator's employment and the use is allowed under federal
23 motor carrier safety regulations, as defined by Section [644.001](#).

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

27 (1) the use of a portable wireless communication

1 device [~~for electronic messaging~~] while operating a motor vehicle
2 is prohibited in this state; and

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

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

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

14 SECTION 4. The changes in law made by this Act apply only to
15 an offense committed on or after the effective date of this Act. An
16 offense committed before the effective date of this Act is governed
17 by the law in effect on the date the offense was committed, and the
18 former law is continued in effect for that purpose. For purposes of
19 this section, an offense was committed before the effective date of
20 this Act if any element of the offense occurred before that date.

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