

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 62  
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State Affairs  
5/15/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Distracted driving continues to be a significant factor in property damage, injury, and death on this state's roads and highways. Every day, nine Americans are killed from motor vehicle crashes that involved distracted driving, such as using a cell phone or texting. Forty percent of people between 19 and 39 years of age admit to texting while driving, and ten percent of them say they do it regularly. Text messaging while driving creates a crash risk 23 times higher than driving while not distracted. Studies show that a driver's reaction time doubles when a driver is distracted by sending or reading a text message. What's more, drivers who text take their eyes off the road for an average of 4.6 seconds within a six second interval. This equates to traveling the length of a football field at 55 miles per hour without looking. Yet, current state law still does not prohibit texting while driving. Texas is one of just four states with no statute that addresses distracted driving on a statewide level. H.B. 62 remedies that by prohibiting the use of a wireless communication device for electronic messaging while operating a motor vehicle unless the vehicle is stopped. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 62 amends current law relating to the use of a wireless communication device while operating a motor vehicle, creates a criminal offense, and modifies existing criminal penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Provides that this Act may be cited as the Alex Brown Memorial Act.

SECTION 2. Amends Sections 521.161(b) and (c), Transportation Code, as follows:

(b) Requires that the examination of license applicants include a test of the applicant's knowledge of the effect of using a wireless communication device, or engaging in other actions that may distract a driver, on the safe or effective operation of a motor vehicle.

(c) Amends this subsection to include Subsection (b)(1)(E) with the parts of the examination administered by the Texas Department of Public Safety (DPS) that applicants may take in writing in addition to or instead of through a mechanical, electronic, or other testing method.

SECTION 3. Amends Section 543.004(a), Transportation Code, to require an officer to issue a written notice to appear for certain offenses, including the use of a wireless communication device under Section 545.4251. Makes nonsubstantive changes

SECTION 4. Amends Section 545.424, Transportation Code, by amending Subsections (a), (b), and (c) and adding Subsection (g), as follows:

(a) Prohibits a person under 18 years of age from operating a motor vehicle while using a wireless communication device, rather than wireless communications device, except in case of emergency. Provides that this subsection does not apply to a person licensed by

the Federal Communications Commission (FCC) while operating a radio frequency device other than a wireless communication device.

(b) Prohibits a person under 17 years of age who holds a restricted motorcycle license or moped license from operating a motorcycle or moped while using a wireless communication device, rather than wireless communications device, except in case of emergency. Provides that this subsection does not apply to a person licensed by the FCC while operating a radio frequency device other than a wireless communication device.

(c) Provides that Subsection (a-1) does not apply to a person operating a motor vehicle while accompanied in the manner required by Section 521.222(d)(2) (relating to the holder operating a type of motor vehicle on a highway while the holder is accompanied by a person occupying the seat by the operator) for the holder of an instruction permit. Deletes existing text providing that this section does not apply to a person operating a motor vehicle while accompanied in the manner required by Section 521.222(d)(2) for the holder of an instruction permit or a person licensed by the FCC to operate a wireless communication device or a radio frequency device.

(g) Provides that an offense under Subsection (a) or (b) is a misdemeanor punishable by a fine of at least \$25 and not more than \$99 unless it is shown on the trial of the offense that the defendant has been previously convicted at least one time of an offense under either subsection, in which event the offense is punishable by a fine of at least \$100 and not more than \$200.

SECTION 5. Amends the heading to Section 545.425, Transportation Code, to read as follows:

Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE IN A SCHOOL CROSSING ZONE OR WHILE OPERATING A SCHOOL BUS WITH A MINOR PASSENGER; POLITICAL SUBDIVISION SIGN REQUIREMENTS; OFFENSE.

SECTION 6. Amends Section 545.425(a)(1), Transportation Code, to redefine "hands-free device."

SECTION 7. Amends Section 545.425(b-2), Transportation Code, as follows:

(b-2) Provides that a municipality, county, or other political subdivision that by ordinance or rule prohibits the use of a wireless communication device while operating a motor vehicle, including a prohibition that contains an exception for the use of a wireless communication device with a hands-free device, throughout the jurisdiction of the political subdivision is not required to post a sign as required by Subsection (b-1) (relating to certain political subdivisions posting a sign that complies with certain standards at the entrance to each school crossing zone in the political subdivision) and is required to take certain actions, rather than provides that a municipality, county, or other political subdivision that by ordinance or rule prohibits the use of a wireless communication device while operating a motor vehicle throughout the jurisdiction of the political subdivision is not required to post a sign as required by Subsection (b-1) if the political subdivision meets certain conditions.

SECTION 8. Amends Subchapter I, Chapter 545, Transportation Code, by adding Section 545.4251, as follows:

Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION DEVICE FOR ELECTRONIC MESSAGING; OFFENSE. (a) Defines "electronic message" and "wireless communication device."

(b) Establishes that an operator commits an offense if the operator uses a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped. Requires that the behavior, to be prosecuted, be committed in the presence of or within the view of a peace officer or established by other evidence.

(c) Provides that it is an affirmative defense to prosecution of an offense under this section that the operator used a portable wireless communication device in certain situations.

(d) Provides that Subsection (b) does not apply to an operator of an authorized emergency or law enforcement vehicle using a portable wireless communication device while acting in an official capacity or an operator who is licensed by the FCC while operating a radio frequency device other than a portable wireless communication device.

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

(f) Provides that, notwithstanding Subsection (e), an offense under this section is a Class A misdemeanor punishable by a fine not to exceed \$4,000 and confinement in jail for a term not to exceed one year if it is shown on the trial of the offense that the defendant caused the death or serious bodily injury of another person.

(g) Authorizes the person, if conduct constituting an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

(h) Requires the Texas Department of Transportation to post a sign at each point at which an interstate highway or United States highway enters this state and informs an operator of certain information relating to the use of a portable wireless communication device.

(i) Prohibits a peace officer who stops a motor vehicle for an alleged violation of this section from taking possession of or otherwise inspecting a portable wireless communication device in the possession of the operator unless authorized by the Code of Criminal Procedure, the Penal Code, or other law.

(j) Provides that this section preempts all local ordinances, rules, or other regulations adopted by a political subdivision relating to the use of a portable wireless communication device by the operator of a motor vehicle to read, write, or send an electronic message.

SECTION 9. Amends Section 708.052, Transportation Code, by adding Subsection (e-1), as follows:

(e-1) Prohibits DPS, notwithstanding Subsection (b) (relating to requiring the assignment of points to a person's license by DPS for certain traffic law violations), from assigning points to a person's license if the offense of which the person was convicted is the offense of using a portable wireless communication device for electronic messaging as described by Section 545.4251.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2017.