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H.B. No. 62

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; modifying
4 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 amending Subsections (a), (b), and (c) and adding Subsection (g)
18 to read as follows:

19 (a) A person under 18 years of age may not operate a motor
20 vehicle while using a wireless communication [~~communications~~]
21 device, except in case of emergency. This subsection does not apply
22 to a person licensed by the Federal Communications Commission while
23 operating a radio frequency device other than a wireless
24 communication device.

25 (b) A person under 17 years of age who holds a restricted
26 motorcycle license or moped license may not operate a motorcycle or
27 moped while using a wireless communication [~~communications~~]

1 device, except in case of emergency. This subsection does not apply
2 to a person licensed by the Federal Communications Commission while
3 operating a radio frequency device other than a wireless
4 communication device.

5 (c) Subsection (a-1) [This section] does not apply to[+
6 [(1)] a person operating a motor vehicle while
7 accompanied in the manner required by Section 521.222(d)(2) for the
8 holder of an instruction permit[+or
9 [(2) a person licensed by the Federal Communications
10 Commission to operate a wireless communication device or a radio
11 frequency device].

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

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

20 (1) "Hands-free device" means speakerphone
21 capability, [or] a telephone attachment, or another function or
22 other piece of equipment, regardless of whether permanently
23 installed in or on a wireless communication device or in a [the]
24 motor vehicle, that allows use of the wireless communication device
25 without use of either of the operator's hands, except to activate or
26 deactivate a function of the wireless communication device or
27 hands-free device. The term includes voice-operated technology and

1 a push-to-talk function.

2 SECTION 5. Subchapter I, Chapter 545, Transportation Code,
3 is amended by adding Section 545.4251 to read as follows:

4 Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION
5 DEVICE FOR ELECTRONIC MESSAGING; OFFENSE. (a) In this section:

6 (1) "Electronic message" means data that is read from
7 or entered into a wireless communication device for the purpose of
8 communicating with another person.

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

11 (b) An operator commits an offense if the operator uses a
12 portable wireless communication device to read, write, or send an
13 electronic message while operating a motor vehicle unless the
14 vehicle is stopped.

15 (c) It is an affirmative defense to prosecution of an
16 offense under this section that the operator used a portable
17 wireless communication device:

18 (1) in conjunction with a hands-free device, as
19 defined by Section 545.425;

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

22 (3) to read an electronic message that the person
23 reasonably believed concerned an emergency; or

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

27 (A) a dispatcher; or

1 (B) a digital network or software application
2 service.

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

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

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

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

16 (f) The Texas Department of Transportation shall post a sign
17 at each point at which an interstate highway or United States
18 highway enters this state that informs an operator that:

19 (1) the use of a portable wireless communication
20 device for electronic messaging while operating a motor vehicle is
21 prohibited in this state; and

22 (2) the operator is subject to a fine if the operator
23 uses a portable wireless communication device for electronic
24 messaging while operating a motor vehicle in this state.

25 (g) A peace officer who stops a motor vehicle for an alleged
26 violation of this section may not take possession of or otherwise
27 inspect a portable wireless communication device in the possession

1 of the operator unless authorized by the Code of Criminal
2 Procedure, the Penal Code, or other law.

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

5 (e-1) Notwithstanding Subsection (b), the department may
6 not assign points to a person's license if the offense of which the
7 person was convicted is the offense of using a portable wireless
8 communication device for electronic messaging as described by
9 Section 545.4251.

10 SECTION 7. The changes in law made by this Act to Chapter
11 545, Transportation Code, apply only to an offense committed on or
12 after the effective date of this Act. An offense committed before
13 the effective date of this Act is governed by the law in effect on
14 the date the offense was committed, and the former law is continued
15 in effect for that purpose. For purposes of this section, an
16 offense was committed before the effective date of this Act if any
17 element of the offense occurred before that date.

18 SECTION 8. This Act takes effect September 1, 2017.