

House Bill 62
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. This Act may be cited as the Alex Brown Memorial Act.

SECTION 2. Sections 521.161(b) and (c), Transportation Code, are amended to read as follows:

(b) The examination must include:

(1) a test of the applicant's:

(A) vision;

(B) ability to identify and understand highway signs in English that regulate, warn, or direct traffic;

(C) knowledge of the traffic laws of this state; ~~and~~

(D) knowledge of motorists' rights and responsibilities in relation to bicyclists; and

(E) 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;

(2) a demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the applicant will be licensed to operate; and

(3) any additional examination the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely.

(c) The department shall give each applicant the option of taking the parts of the examination under Subsections (b)(1)(B), (C), ~~and~~ (D), and (E) in writing in addition to or instead of through a mechanical, electronic, or other testing method. If the applicant takes that part of the examination in writing in addition to another testing method, the applicant is considered to have passed that part of the examination if the applicant passes either version of the examination. The

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SECTION 1. Same as House version.

SECTION 2. Same as House version.

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department shall inform each person taking the examination of the person's rights under this subsection.

SECTION 3. Section 543.004(a), Transportation Code, is amended to read as follows:

(a) An officer shall issue a written notice to appear if:

(1) the offense charged is:

(A) speeding;

(B) the use of a wireless communication device under Section 545.4251; or

(C) a violation of the open container law, Section 49.031 [49.03], Penal Code; and

(2) the person makes a written promise to appear in court as provided by Section 543.005.

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

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

(b) A person under 17 years of age who holds a restricted motorcycle license or moped license may not operate a motorcycle or moped while using a wireless communication [~~communications~~] device, except in case of emergency. This subsection does not apply to a person licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

(c) Subsection (a-1) [This section] does not apply to:

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~~[(4)]~~ 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~~

~~[(2)] a person licensed by the Federal Communications Commission to operate a wireless communication device or a radio frequency device].~~

(g) 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. The heading to Section 545.425, Transportation Code, is amended 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. Section 545.425(a)(1), Transportation Code, is amended to read as follows:

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

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SECTION 7. Section 545.425(b-2), Transportation Code, is amended to read as follows:

(b-2) 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) and shall [if the political subdivision]:

(1) ~~post [posts]~~ signs that are located at each point at which a state highway, U.S. highway, or interstate highway enters the political subdivision and that state:

(A) that an operator is prohibited from using a wireless communication device while operating a motor vehicle in the political subdivision, and whether use of a wireless communication device with a hands-free device is allowed in the political subdivision; and

(B) that the operator is subject to a fine if the operator uses a wireless communication device while operating a motor vehicle in the political subdivision; and

(2) subject to all applicable United States Department of Transportation Federal Highway Administration rules, ~~post [posts]~~ a message that complies with Subdivision (1) on any dynamic message sign operated by the political subdivision located on a state highway, U.S. highway, or interstate highway in the political subdivision.

SECTION 8. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.4251 to read as follows:

Sec. 545.4251. USE OF PORTABLE WIRELESS

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COMMUNICATION DEVICE FOR ELECTRONIC MESSAGING; OFFENSE. (a) In this section:

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

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

(b) 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.

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

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

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

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

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

(A) a dispatcher; or

(B) a digital network or software application service.

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COMMUNICATION DEVICE FOR ELECTRONIC MESSAGING; OFFENSE. (a) In this section:

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

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

(b) 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. To be prosecuted, the behavior must be committed in the presence of or within the view of a peace officer or established by other evidence.

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

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

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

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

(4) to read an electronic message that the person reasonably believed concerned an emergency;

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

(A) a dispatcher; or

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

(6) to activate a function that plays music.

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- (d) Subsection (b) does not apply to:
(1) an operator of an authorized emergency or law enforcement vehicle using a portable wireless communication device while acting in an official capacity; or
(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a portable wireless communication device.
- (e) 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.
- (e-1) Notwithstanding Subsection (e), the total amount imposed by the court, including the fine and associated court costs and other fees, for an offense under this section may not exceed:
(1) \$99 for a first offense under this section; and
(2) \$200 for a second or subsequent offense under this section.
- (f) The Texas Department of Transportation shall post a sign at each point at which an interstate highway or United States highway enters this state that informs an operator that:
(1) the use of a portable wireless communication device for electronic messaging while operating a motor vehicle is prohibited in this state; and
(2) the operator is subject to a fine if the operator uses a portable wireless communication device for electronic

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- (d) Subsection (b) does not apply to:
(1) an operator of an authorized emergency or law enforcement vehicle using a portable wireless communication device while acting in an official capacity; or
(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a portable wireless communication device.
- (e) 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) 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) If conduct constituting an offense under this section also constitutes an offense under any other law, the person may be prosecuted under this section, the other law, or both.
- (h) The Texas Department of Transportation shall post a sign at each point at which an interstate highway or United States highway enters this state that informs an operator that:
(1) the use of a portable wireless communication device for electronic messaging while operating a motor vehicle is prohibited in this state; and
(2) the operator is subject to a fine if the operator uses a portable wireless communication device for electronic

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messaging while operating a motor vehicle in this state.

(g) A peace officer who stops a motor vehicle for an alleged violation of this section may not take possession of or otherwise inspect 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.

(h) If conduct constituting an offense under this section also constitutes an offense under a municipal ordinance, the actor may be prosecuted only under this section.

SECTION 9. Section 708.052, Transportation Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding Subsection (b), the department may not assign 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. The changes in law made by this Act to Section 543.004 and Chapter 545, Transportation Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 11. This Act takes effect September 1, 2017.

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messaging while operating a motor vehicle in this state.

(i) A peace officer who stops a motor vehicle for an alleged violation of this section may not take possession of or otherwise inspect 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) 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. Same as House version.

SECTION 10. Same as House version.

SECTION 11. Same as House version.

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