

By: Zaffirini

S.B. No. 43

A BILL TO BE ENTITLED

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

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

5 SECTION 1. Section 543.004(a), Transportation Code, is
6 amended to read as follows:

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

8 (1) the offense charged is:

9 (A) speeding;

10 (B) the use of a wireless communication device
11 under Section 545.4251 punishable by a fine only; or

12 (C) a violation of the open container law,
13 Section 49.031, Penal Code; and

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

16 SECTION 2. The heading to Section 545.4251, Transportation
17 Code, is amended to read as follows:

18 Sec. 545.4251. USE OF PORTABLE WIRELESS COMMUNICATION
19 DEVICE WHILE OPERATING MOTOR VEHICLE [~~FOR ELECTRONIC MESSAGING~~];
20 OFFENSE.

21 SECTION 3. Section 545.4251, Transportation Code, is
22 amended by amending Subsections (a), (b), (c), (d), (h), and (j) and
23 adding Subsection (c-1) to read as follows:

24 (a) In this section:

1 (1) "Hands-free device" means speakerphone
2 capability, a telephone attachment, or another function or other
3 piece of equipment, regardless of whether permanently installed in
4 or on a wireless communication device or in a motor vehicle, that
5 allows use of the wireless communication device without use of
6 either of the operator's hands, except to activate or deactivate a
7 function of the wireless communication device or hands-free device.
8 The term includes voice-operated technology and a push-to-talk
9 function [~~"Electronic message" means data that is read from or~~
10 ~~entered into a wireless communication device for the purpose of~~
11 ~~communicating with another person~~].

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

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

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

27 (1) in conjunction with a hands-free device[~~as~~

1 defined by Section [545.425](#)];

2 (2) to contact emergency services; or

3 (3) that was mounted in or on the vehicle solely to
4 continuously record or broadcast video inside or outside of the
5 vehicle [~~to navigate using a global positioning system or~~
6 ~~navigation system;~~

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

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

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

16 [(A) ~~a dispatcher; or~~

17 [(B) ~~a digital network or software application~~
18 ~~service; or~~

19 [(6) ~~to activate a function that plays music].~~

20 (c-1) The affirmative defense in Subsection (c)(1) is not
21 available for an offense under Subsection (b) committed by a person
22 under 18 years of age or by a person operating a school bus with a
23 minor passenger on the bus.

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

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

1 (2) an operator of a commercial motor vehicle, other
2 than a school bus with a minor passenger on the bus, who uses a
3 portable wireless communication device while acting in the scope of
4 the operator's employment and the use is allowed under federal
5 motor carrier safety regulations, as defined by Section 644.001 [~~an~~
6 ~~operator who is licensed by the Federal Communications Commission~~
7 ~~while operating a radio frequency device other than a portable~~
8 ~~wireless communication device~~].

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

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

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

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

23 SECTION 4. Section 708.052(e-1), Transportation Code, is
24 amended to read as follows:

25 (e-1) Notwithstanding Subsection (b), the department may
26 not assign points to a person's license if the offense of which the
27 person was convicted is the offense of using a portable wireless

1 communication device [~~for electronic messaging~~] as described by
2 Section 545.4251.

3 SECTION 5. Sections 545.424(a), (b), (f), and (g), 545.425,
4 and 545.4252, Transportation Code, are repealed.

5 SECTION 6. The changes in law made by this Act apply only to
6 an offense committed on or after the effective date of this Act. An
7 offense committed before the effective date of this Act is governed
8 by the law in effect on the date the offense was committed, and the
9 former law is continued in effect for that purpose. For purposes of
10 this section, an offense was committed before the effective date of
11 this Act if any element of the offense occurred before that date.

12 SECTION 7. This Act takes effect September 1, 2019.