88R2071 JAM-F

By:  Zaffirini S.B. No. 41

A BILL TO BE ENTITLED

AN ACT

relating to the use of a wireless communication device while operating a motor vehicle.

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

SECTION 1.  This Act may be cited as Allie's Way.

SECTION 2.  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 punishable by a fine only; or

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

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

SECTION 3.  The heading to Section 545.4251, Transportation Code, is amended to read as follows:

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

SECTION 4.  Section 545.4251, Transportation Code, is amended by amending Subsections (a), (b), (c), (d), (h), and (j) and adding Subsection (c-1) to read as follows:

(a)  In this section:

(1)  "Hands-free device" means speakerphone capability, 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 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 with a swipe or tap of the operator's finger. The term includes voice-operated technology and a push-to-talk function [~~"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" means a device through which personal wireless services, as defined by 47 U.S.C. Section 332(c)(7)(C)(i), are transmitted. The term does not include a device that is only a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes [~~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 outside a lane of travel. 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 contact emergency services; or

(3)  that was mounted in or on the vehicle solely to continuously record or broadcast video inside or outside of the vehicle [~~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~~].

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

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

(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 messaging~~] while operating a motor vehicle in this state.

(j)  This section preempts all local ordinances, rules, or other regulations adopted by a local authority [~~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 5.  The following provisions of the Transportation Code are repealed:

(1)  Sections 545.424(a), (b), (f), and (g);

(2)  Section 545.425; and

(3)  Section 545.4252.

SECTION 6.  The changes in law made by this Act 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 7.  This Act takes effect September 1, 2023.