

Chapter 438

H.B. No. 62

AN ACT

1
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 543.004(a), Transportation Code, is
17 amended to read as follows:

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

19 (1) the offense charged is:

20 (A) speeding;

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

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

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

27 SECTION 4. Section 545.424, Transportation Code, is amended

1 by amending Subsections (a), (b), and (c) and adding Subsection (g)
2 to read as follows:

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

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

16 (c) Subsection (a-1) [~~This section~~] does not apply to[+
17 [~~(1)~~] a person operating a motor vehicle while
18 accompanied in the manner required by Section 521.222(d)(2) for the
19 holder of an instruction permit[~~+ or~~

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

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

1 least \$100 and not more than \$200.

2 SECTION 5. The heading to Section 545.425, Transportation
3 Code, is amended to read as follows:

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

7 SECTION 6. Section 545.425(a)(1), Transportation Code, is
8 amended to read as follows:

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

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

20 (b-2) A municipality, county, or other political
21 subdivision that by ordinance or rule prohibits the use of a
22 wireless communication device while operating a motor vehicle,
23 including a prohibition that contains an exception for the use of a
24 wireless communication device with a hands-free device, throughout
25 the jurisdiction of the political subdivision is not required to
26 post a sign as required by Subsection (b-1) and shall ~~[if the~~
27 ~~political subdivision]~~:

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

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

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

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

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

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

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

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

27 (b) An operator commits an offense if the operator uses a

1 portable wireless communication device to read, write, or send an
2 electronic message while operating a motor vehicle unless the
3 vehicle is stopped. To be prosecuted, the behavior must be
4 committed in the presence of or within the view of a peace officer
5 or established by other evidence.

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

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

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

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

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

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

22 (A) a dispatcher; or

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

25 (6) to activate a function that plays music.

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

27 (1) an operator of an authorized emergency or law

1 enforcement vehicle using a portable wireless communication device
2 while acting in an official capacity; or

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

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

12 (f) Notwithstanding Subsection (e), an offense under this
13 section is a Class A misdemeanor punishable by a fine not to exceed
14 \$4,000 and confinement in jail for a term not to exceed one year if
15 it is shown on the trial of the offense that the defendant caused
16 the death or serious bodily injury of another person.

17 (g) If conduct constituting an offense under this section
18 also constitutes an offense under any other law, the person may be
19 prosecuted under this section, the other law, or both.

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

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

26 (2) the operator is subject to a fine if the operator
27 uses a portable wireless communication device for electronic

1 messaging while operating a motor vehicle in this state.

2 (i) A peace officer who stops a motor vehicle for an alleged
3 violation of this section may not take possession of or otherwise
4 inspect a portable wireless communication device in the possession
5 of the operator unless authorized by the Code of Criminal
6 Procedure, the Penal Code, or other law.

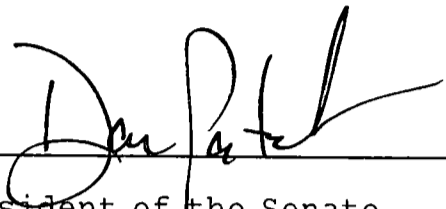
7 (j) This section preempts all local ordinances, rules, or
8 other regulations adopted by a political subdivision relating to
9 the use of a portable wireless communication device by the operator
10 of a motor vehicle to read, write, or send an electronic message.

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

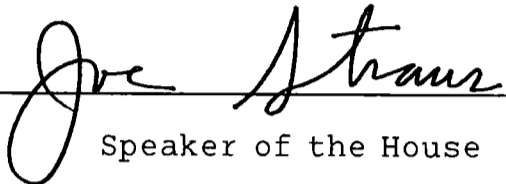
13 (e-1) Notwithstanding Subsection (b), the department may
14 not assign points to a person's license if the offense of which the
15 person was convicted is the offense of using a portable wireless
16 communication device for electronic messaging as described by
17 Section 545.4251.

18 SECTION 10. The changes in law made by this Act to Section
19 543.004 and Chapter 545, Transportation Code, apply only to an
20 offense committed on or after the effective date of this Act. An
21 offense committed before the effective date of this Act is governed
22 by the law in effect on the date the offense was committed, and the
23 former law is continued in effect for that purpose. For purposes of
24 this section, an offense was committed before the effective date of
25 this Act if any element of the offense occurred before that date.

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



President of the Senate



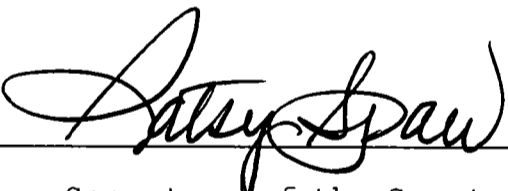
Speaker of the House

I certify that H.B. No. 62 was passed by the House on March 16, 2017, by the following vote: Yeas 114, Nays 32, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 62 on May 21, 2017, by the following vote: Yeas 123, Nays 17, 2 present, not voting.



Chief Clerk of the House

I certify that H.B. No. 62 was passed by the Senate, with amendments, on May 19, 2017, by the following vote: Yeas 23, Nays 8.



Secretary of the Senate

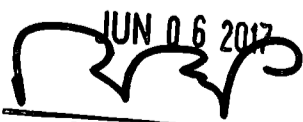
APPROVED: 6-5-2017

Date



Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:15pm O'CLOCK



Secretary of State

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 20, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB62 by Craddick (Relating to the use of a wireless communication device while operating a motor vehicle; creating a criminal offense; modifying existing criminal penalties.), **As Passed 2nd House**

<p>No significant fiscal implication to the State is anticipated.</p>

The bill would amend Chapter 545 of the Transportation Code to establish a misdemeanor offense punishable by a fine of not more than \$99 for a first time offense or \$200 if the offender has been previously convicted for the same offense, for using a hand held device to read, write, or send a text based communication while operating a moving vehicle that is not stopped. The bill sets forth certain exceptions and defenses to prosecution for the offense. If the offense causes the death or serious bodily injury of another person, the offense would be punishable as a Class A misdemeanor.

The bill would amend Chapter 521 of the Transportation Code to include knowledge of the effect of using wireless communication device while in operation of a motor vehicle in the examination of license applicants.

The bill would require the Texas Department of Transportation (TxDOT) to post a sign on each interstate highway or United States highway at the entrance to this state informing motor vehicle operators of certain information relating to the prohibition of using a wireless communication device while operating a motor vehicle as set forth by the bill.

It is assumed that any state costs associated with implementing the provisions of the bill could be absorbed with existing agency resources.

The bill would take effect on September 1, 2017.

Local Government Impact

There could be a negative fiscal impact to cities that currently ban the use of a wireless communication device for text-based communication depending on whether the fines imposed by the cities exceed the limits specified by the provisions of the bill. Additionally, a city that does not currently have a ban may experience a positive fiscal impact. The fiscal impact would vary by locality and would depend on the number of offenses committed and the amount of the fine issued.

The City of Georgetown anticipates no significant fiscal impact from the provisions of the bill.

According to the Texas Municipal League, no significant fiscal impact is anticipated.

A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety, 601
Department of Transportation

LBB Staff: UP, AG, GG, BM, TG, SD, EK

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 17, 2017

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB62** by Craddick (Relating to the use of a wireless communication device while operating a motor vehicle; creating a criminal offense; modifying existing criminal penalties.), **Committee Report 2nd House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>

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Comptroller of Public Accounts, 405 Department of Public Safety, 601
Department of Transportation

LBB Staff: UP, AG, GG, BM, TG, SD, EK

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 11, 2017

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB62 by Craddick (Relating to the use of a wireless communication device while operating a motor vehicle; creating a criminal offense; modifying existing criminal penalties.), **As Engrossed**

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety, 601
Department of Transportation

LBB Staff: UP, AG, GG, BM, TG, SD, EK

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 7, 2017

TO: Honorable Geanie W. Morrison, Chair, House Committee on Transportation

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB62 by Craddick (Relating to the use of a wireless communication device while operating a motor vehicle; creating a criminal offense; modifying existing criminal penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend Chapter 545 of the Transportation Code to establish a misdemeanor offense punishable by a fine of not more than \$99 for a first time offense or \$200 if the offender has been previously convicted for the same offense, for using a hand held device to read, write, or send a text based communication while operating a moving vehicle that is not stopped. The bill sets forth certain exceptions and defenses to prosecution for this offense.

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The bill would take effect on September 1, 2017.

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The City of Georgetown anticipates no significant fiscal impact from the provisions of the bill.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety, 601
Department of Transportation

LBB Staff: UP, AG, GG, BM, TG, SD, EK