

## **BILL ANALYSIS**

Senate Research Center

H.B. 63  
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Transportation  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

As many states and Texas cities have recognized, text-based messaging while driving can be an extremely hazardous practice for drivers. As of February 2013, 39 states, the District of Columbia, Puerto Rico, Guam, and the United States (U.S.) Virgin Islands prohibit texting while driving for all drivers, an increase of 10 states in the last two years. The current Texas Transportation Code prohibits a driver from using a wireless communication device while operating a passenger bus with a minor passenger, in a school zone if there was a sign posted to that effect, or as a person under 18 years of age except in case of emergency. Current state law does not prohibit texting while driving for all motorists; this bill enacts such a prohibition.

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) estimates that there are at least 3,000 deaths annually from distraction-affected crashes—crashes in which drivers lost focus on the safe control of their vehicles due to manual, visual, or cognitive distraction. Although it is difficult to determine exactly how many vehicle accidents result from texting while driving, data from states that do track these incidents indicates that texting while driving can be a serious and in some cases fatal distraction because it involves all three facets of distraction. Studies have shown that drivers sending or receiving text messages while driving had more than 20 times the risk of a crash or near crash than did drivers not using a phone. Drivers who text messaged while driving took their eyes off the road for an average of 4.6 seconds within a six second interval. This equates to traveling the length of a football field at 55 miles per hour without looking.

It is well established that the use of cell phones in vehicles impairs drivers; for example, drivers are more likely to miss critical traffic signals, slower to respond to the signals they do detect, and more likely to be involved in rear-end collisions when they are interacting with a hand-held device. Some researchers have even reported that the risk of being in a traffic accident while using a cell phone may be as great as the hazard associated with driving with a blood alcohol level at the legal limit. In 2010, text messaging while driving surpassed drunk driving as the number one perceived threat to personal safety.

A *New York Times*/CBS News public opinion poll found in 2009, nearly all Americans (up to 97 percent) said texting while driving should be illegal. Even though opponents argue that it is difficult to enforce texting while driving laws, 39 other states and numerous cities have enacted legislation successfully. The mere presence of the law will place a stigma on the activity that will have a deterrent effect on its practice, thereby increasing public safety. Ultimately, the state, local, and national support for prohibiting texting while driving reveals a greater societal awareness of the dangers of this practice that should be addressed by the legislature.

H.B. 63 amends current law relating to the creation of an offense for use of a handheld wireless communication device for text-based communication while operating a motor vehicle.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Authorizes this Act to be cited as the Alex Brown Memorial Act.

SECTION 2. Amends Section 545.424, Transportation Code, by adding Subsection (g) to provide that an offense under Subsection (a) (relating to prohibiting a person under 18 years of age from operating a motor vehicle while using a wireless communications device, except in case of emergency) or (b) (relating to prohibiting a person under 17 years of age who holds a restricted motorcycle license or moped license from operating a motorcycle or moped while using a wireless communication device, except in case of emergency) is a misdemeanor punishable by a fine of not more than \$100 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 not more than \$200.

SECTION 3. Amends the heading to Section 545.425, Transportation Code, to read as follows:

Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE GENERALLY; OFFENSE.

SECTION 4. Amends Section 545.425(a)(1), Transportation Code, to redefine "hands-free device."

SECTION 5. Amends Subchapter I, Chapter 545, Transportation Code, by adding Section 545.4251, as follows:

Sec. 545.4251. USE OF WIRELESS COMMUNICATION DEVICE TO SEND TEXT-BASED COMMUNICATIONS; OFFENSE. (a) Defines, in this section, "handheld wireless communication device" and "text-based communication."

(b) Provides that an operator commits an offense if the operator uses a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped.

(c) Provides that it is a defense to prosecution under Subsection (b) that the operator used a handheld wireless communication device to read, select, or enter a telephone number or name for the purpose of making a telephone call; in conjunction with voice-operated technology, a push-to-talk function, or a hands-free device, as defined by Section 545.425; to navigate using a global positioning system or navigation service; to report illegal activity or summon emergency help; or to read a text-based communication that the person reasonably believes concerns an emergency or that concerns an emergency regardless of the person's belief; or the handheld wireless communication device was used by the operator to relay information between the operator and a dispatcher in the course of the operator's occupational duties and was affixed to the vehicle.

(d) Provides that Subsection (b) does not apply to an operator of an authorized emergency or law enforcement vehicle using a wireless communication device while acting in an official capacity or an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a handheld wireless communication device.

(e) Provides that this section preempts all local ordinances, rules, or regulations adopted by a political subdivision of this state relating to using a wireless communication device while operating a motor vehicle.

(e-1) Provides that Subsection (e) does not apply to a local ordinance, rule, or regulation adopted by a political subdivision of this state before September 1, 2011.

(f) Provides that an offense under this section is a misdemeanor punishable by a fine of not more than \$100 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 not more than \$200.

(g) Requires the Texas Department of Transportation to post a sign at each point at which an interstate highway or United States highway enters this state that informs an operator that the use of a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle is prohibited in this state and the operator is subject to a fine if the operator uses a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle in this state.

(h) Prohibits a peace officer who stops a motor vehicle for an alleged violation of this section from, without the consent of the operator, taking possession of or otherwise inspecting a wireless communication device in the possession of the operator solely based on a violation of this section.

(i) Authorizes a telecommunications provider to provide records related to the commission of an alleged offense under this section only as required by a search warrant issued under Chapter 18 (Search Warrants), Code of Criminal Procedure.

SECTION 6. Effective date: September 1, 2013.