

# HOUSE JOURNAL

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EIGHTY-FOURTH LEGISLATURE, REGULAR SESSION

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## PROCEEDINGS

THIRTY-EIGHTH DAY — WEDNESDAY, MARCH 25, 2015

The house met at 12:03 p.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 83).

Present — Mr. Speaker; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Ashby; Aycock; Bell; Bernal; Blanco; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Burns; Burrows; Button; Canales; Capriglione; Clardy; Coleman; Collier; Cook; Craddick; Crownover; Cyrier; Dale; Darby; Davis, S.; Davis, Y.; Deshotel; Dutton; Elkins; Faircloth; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Galindo; Geren; Giddings; Goldman; Gonzales; González; Guerra; Guillen; Gutierrez; Harless; Hernandez; Herrero; Howard; Huberty; Hughes; Hunter; Isaac; Israel; Johnson; Kacal; Keffer; Keough; King, K.; King, P.; King, S.; King, T.; Klick; Koop; Krause; Kuempel; Landgraf; Larson; Leach; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Metcalf; Meyer; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Murr; Naishtat; Nevárez; Oliveira; Otto; Paddie; Parker; Paul; Peña; Phelan; Phillips; Pickett; Price; Raney; Raymond; Reynolds; Riddle; Rinaldi; Rodriguez, E.; Rodriguez, J.; Romero; Rose; Sanford; Schaefer; Schofield; Schubert; Shaheen; Sheets; Sheffield; Simmons; Simpson; Smith; Smithee; Spitzer; Springer; Stephenson; Stickland; Thompson, E.; Thompson, S.; Tinderholt; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Vo; Walle; White, J.; White, M.; Workman; Wray; Wu; Zedler; Zerwas.

Absent, Excused — Laubenberg.

Absent — Dukes; VanDeaver.

The speaker recognized Representative Leach who introduced Dr. Albert L. Reyes, president and CEO, Buckner International, Dallas, who offered the invocation as follows:

We come to you, Lord, recognizing that every good and perfect gift comes from you, the Father of lights in whom there is no wavering or shifting of shadow. We thank you for life, liberty, health, and the freedom to serve you in this great State of Texas.

I come to you on behalf of our Texas House of Representatives. I ask you for an extra measure of wisdom for them as they lead our state. I ask you to protect them and their families. I pray that you bless and grant your favor on them and the work of their hands.

Lord, I pray that you would also be patient with us when we sin—when we do and say things that displease you. Give us the strength to admit when we are wrong. Teach us how to forgive and be forgiven. Teach us how to be good citizens. Help us live out your teaching to do unto others as you would have them do unto you. Give us the courage to do what is right, compassion for each other, and conviction to live by the instructions in your holy word. I ask you these things in the name above all names, in the name by which every knee will bow, in the name of Jesus of Nazareth. Amen.

The speaker recognized Representative Canales who led the house in the pledges of allegiance to the United States and Texas flags.

### **LEAVE OF ABSENCE GRANTED**

The following member was granted leave of absence for today because of important business in the district:

Laubenberg on motion of Sheets.

### **CAPITOL PHYSICIAN**

The speaker recognized Representative R. Miller who presented Dr. Elise Sadoun of Sugar Land as the "Doctor for the Day."

The house welcomed Dr. Sadoun and thanked her for her participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

(Kuempel in the chair)

### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

(VanDeaver now present)

### **REGULAR ORDER OF BUSINESS SUSPENDED**

On motion of Representative Price and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

### **LEAVE OF ABSENCE GRANTED**

The following member was granted leave of absence for the remainder of today because of important business:

McClendon on motion of Allen.

### **HR 1437 - ADOPTED (by Farias)**

Representative Farias moved to suspend all necessary rules to take up and consider at this time **HR 1437**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1437**, Congratulating Chief Ross Wallace on his upcoming retirement from the Universal City Fire Department.

**HR 1437** was adopted.

On motion of Representative Martinez, the names of all the members of the house were added to **HR 1437** as signers thereof.

**HR 1438 - ADOPTED**  
**(by Farias)**

Representative Farias moved to suspend all necessary rules to take up and consider at this time **HR 1438**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1438**, Congratulating Assistant Chief John Hatzel on his upcoming retirement from the Universal City Fire Department.

**HR 1438** was adopted.

On motion of Representative Martinez, the names of all the members of the house were added to **HR 1438** as signers thereof.

**INTRODUCTION OF GUESTS**

The chair recognized Representative Farias who introduced Chief Ross Wallace, Assistant Chief John Hatzel, and members of their families.

**HR 1507 - ADOPTED**  
**(by Raney)**

Representative Raney moved to suspend all necessary rules to take up and consider at this time **HR 1507**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1507**, Recognizing March 25, 2015, as 4-H Day at the State Capitol.

**HR 1507** was adopted.

**HR 1451 - ADOPTED**  
**(by D. Bonnen)**

Representative D. Bonnen moved to suspend all necessary rules to take up and consider at this time **HR 1451**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1451**, Congratulating Henry Josey on his success in high school, college, and professional football.

**HR 1451** was adopted.

On motion of Representative G. Bonnen, the names of all the members of the house were added to **HR 1451** as signers thereof.

**INTRODUCTION OF GUESTS**

The chair recognized Representative D. Bonnen who introduced Henry Josey and members of his family.

**LEAVE OF ABSENCE GRANTED**

The following member was granted leave of absence for today because of important business in the district:

Dukes on motion of Howard.

**HR 1255 - ADOPTED  
(by Rinaldi)**

Representative Rinaldi moved to suspend all necessary rules to take up and consider at this time **HR 1255**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1255**, Recognizing March 25, 2015, as Coppell Day at the State Capitol.

(Crownover in the chair)

**HR 1255** was adopted.

On motion of Representative Rinaldi, the names of all the members of the house were added to **HR 1255** as signers thereof.

**HR 452 - PREVIOUSLY ADOPTED  
(by P. King)**

The chair laid out the following previously adopted resolution:

**HR 452**, Commemorating the 30th anniversary of the Abandoned Cemetery Association of Parker County.

**HR 500 - PREVIOUSLY ADOPTED  
(by Wray)**

The chair laid out the following previously adopted resolution:

**HR 500**, Congratulating the Ennis High School football team on winning the 2014 UIL 5A Division 2 state championship.

**INTRODUCTION OF GUESTS**

The chair recognized Representative Wray who introduced representatives of the Ennis High School football team.

**HR 600 - PREVIOUSLY ADOPTED  
(by VanDeaver)**

The chair laid out the following previously adopted resolution:

**HR 600**, Recognizing March 25, 2015, as Red River County Day at the State Capitol.

**HR 815 - PREVIOUSLY ADOPTED**

**(by Nevárez)**

The chair laid out and had read the following previously adopted resolution:

**HR 815**, In memory of Albert V. Hallford of Fredericksburg.

**HR 1343 - ADOPTED**

**(by Landgraf)**

Representative Landgraf moved to suspend all necessary rules to take up and consider at this time **HR 1343**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1343**, Recognizing March 25, 2015, as Ward and Winkler Counties Day at the State Capitol.

**HR 1343** was adopted.

**INTRODUCTION OF GUESTS**

The chair recognized Representative Landgraf who introduced a delegation from Ward County.

**HR 1555 - ADOPTED**

**(by Springer)**

Representative Springer moved to suspend all necessary rules to take up and consider at this time **HR 1555**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1555**, Recognizing March 25, 2015, as First Responder Legislative Day at the State Capitol.

**HR 1555** was adopted.

On motion of Representatives Kacal, E. Thompson, and Keough, the names of all the members of the house were added to **HR 1555** as signers thereof.

**COMMITTEES GRANTED PERMISSION TO MEET**

Pursuant to Rule 4, Section 9 of the House Rules, Representative Kacal requested permission for all committees and subcommittees to meet while the house is in session, during bill referral today, pursuant to their committee postings. For purposes of this motion, those committees and subcommittees that are scheduled to meet upon adjournment or final recess today shall be considered to be scheduled to meet during bill referral today.

Permission to meet was granted.

**HR 1544 - ADOPTED**  
**(by Muñoz and Longoria)**

Representative Muñoz moved to suspend all necessary rules to take up and consider at this time **HR 1544**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1544**, Congratulating Mariachi Los Lobos of Palmview High School for winning Class 6A of the 2015 MASBA/TAME Texas High School State Mariachi Competition.

**HR 1544** was adopted.

On motion of Representatives Longoria and Guerra, the names of all the members of the house were added to **HR 1544** as signers thereof.

**HR 1510 - ADOPTED**  
**(by Martinez)**

Representative Martinez moved to suspend all necessary rules to take up and consider at this time **HR 1510**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1510**, Congratulating Billy Parker on his retirement from the Texas A&M Engineering Extension Service.

**HR 1510** was adopted.

**INTRODUCTION OF GUESTS**

The chair recognized Representative Martinez who introduced Billy Parker and members of his family.

**HR 575 - PREVIOUSLY ADOPTED**  
**(by Frullo)**

The chair laid out the following previously adopted resolution:

**HR 575**, Recognizing the Colorectal Cancer Prevention and Awareness Campaign sponsored by the Lubbock and South Plains Colon Cancer Prevention Task Force.

**HR 1445 - ADOPTED**  
**(by Farrar)**

Representative Farrar moved to suspend all necessary rules to take up and consider at this time **HR 1445**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1445**, Recognizing March 2015 as Women's History Month.

**HR 1445** was adopted.

On motion of Representatives Rose, Naishtat, and Howard, the names of all the members of the house were added to **HR 1445** as signers thereof.

### **INTRODUCTION OF GUEST**

The chair recognized Representative Farrar who introduced the Honorable Frances T. "Sissy" Farenthold.

#### **HR 1351 - ADOPTED (by Smithee)**

Representative Smithee moved to suspend all necessary rules to take up and consider at this time **HR 1351**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1351**, Congratulating Lois Miller of Friona on her 100th birthday.

**HR 1351** was adopted.

### **FIVE-DAY POSTING RULE SUSPENDED**

Representative Button moved to suspend the five-day posting rule to allow the Committee on Economic and Small Business Development to consider **HB 931** at 8 a.m. tomorrow in E2.010.

The motion prevailed.

### **COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

Economic and Small Business Development, 8 a.m. tomorrow, E2.010, for a public hearing, to consider **HB 931** and the previously posted agenda.

Homeland Security and Public Safety, 9:30 a.m. tomorrow, E2.014, for a formal meeting, to consider pending business.

Ways and Means, during bill referral today, 1W.14, for a formal meeting, to consider pending business.

### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

### **GENERAL STATE CALENDAR HOUSE BILLS THIRD READING**

The following bills were laid before the house and read third time:

#### **HB 441 ON THIRD READING (by Gonzales)**

**HB 441**, A bill to be entitled An Act relating to the use of a court order as an occupational license.

**HB 441** was passed by (Record 84): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Ashby; Aycock; Bell; Bernal; Blanco; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Burns; Burrows; Button; Canales; Capriglione; Clardy; Coleman; Collier; Cook; Craddick; Cyrier; Dale; Darby; Davis, S.; Davis, Y.; Deshotel; Dutton; Elkins; Faircloth; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Galindo; Geren; Giddings; Goldman; Gonzales; González; Guerra; Guillen; Gutierrez; Harless; Hernandez; Herrero; Howard; Huberty; Hughes; Hunter; Isaac; Israel; Johnson; Kacal; Keffer; Keough; King, K.; King, P.; King, S.; King, T.; Klick; Koop; Krause; Kuempel; Landgraf; Larson; Leach; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; Metcalf; Meyer; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Murr; Naishtat; Nevárez; Oliveira; Otto; Paddie; Parker; Paul; Peña; Phelan; Phillips; Pickett; Price; Raney; Raymond; Reynolds; Riddle; Rinaldi; Rodriguez, E.; Rodriguez, J.; Romero; Rose; Sanford; Schaefer; Schofield; Schubert; Shaheen; Sheets; Sheffield; Simmons; Simpson; Smith; Smithee; Springer; Stephenson; Stickland; Thompson, E.; Thompson, S.; Tinderholt; Turner, C.; Turner, E.S.; Turner, S.; VanDeaver; Villalba; Vo; Walle; White, J.; White, M.; Workman; Wray; Wu; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Crownover(C).

Absent, Excused — Dukes; Laubenberg; McClendon.

Absent — Spitzer.

### STATEMENT OF VOTE

When Record No. 84 was taken, my vote failed to register. I would have voted yes.

Spitzer

(Speaker in the chair)

### GENERAL STATE CALENDAR

#### HOUSE BILLS

#### SECOND READING

The following bills were laid before the house and read second time:

#### **CSHB 80 ON SECOND READING**

**(by Craddick, Cook, Lucio, Harless, Wu, et al.)**

**CSHB 80**, A bill to be entitled An Act relating to the use of a portable wireless communication device while operating a motor vehicle; creating a criminal offense; modifying existing criminal penalties.

#### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

**CSHB 80 - (consideration continued)****CSHB 80 - REMARKS**

REPRESENTATIVE DUTTON: Let me ask you, practically, how this would operate. For example, the police officer sees you with a phone in your hand, and under your bill they would be authorized to stop you, I assume. Is that correct?

REPRESENTATIVE CRADDICK: I'm sorry, I couldn't hear you.

DUTTON: If you're driving along and you had your phone in your hand, I assume that would be probable cause for a police officer to stop you.

CRADDICK: Well, you know, in some cities it is. Under this bill, I guess if he thinks you're texting, that's correct, Mr. Dutton. Only under this bill.

DUTTON: And after that stop is made, how does this work then? Does the police officer ask you were you texting? Does he take your phone?

CRADDICK: He can't take your phone, Mr. Dutton. He cannot take your phone.

DUTTON: How then does the state prove that you were actually texting?

CRADDICK: You know, it's interesting because we had some of the law enforcement people testify—one, they're doing it today in 38 cities and in 45 states, and I think the man behind you is going to make a comment on this, Mr. Fletcher, too. But they're saying they can police it and take care of it.

DUTTON: How does it operate, though? I want to know, practically, from the author's point of view what happens. Do you have to give them your cell phone provider?

CRADDICK: No, you don't have to do that. You're prohibited by law, by federal law, from doing that.

DUTTON: That's what I thought. So what I'm wondering is how would the state prove that you were texting? Because the burden is going to be on the state to prove that you were actually texting.

CRADDICK: That's correct, but I think the burden is also on you to show that you weren't.

DUTTON: No, not under our laws, Mr. Craddick. Not under our laws. Under our laws, the state, once you're accused of a crime, the state has the burden of proof.

CRADDICK: Harold, I think if you've got states doing it, you've got cities doing it, you've got law enforcement groups that say they can do it, we've just got to trust our law enforcement people that they can do it. And you may have some people that are stopped, or pulled over, that weren't texting, and they'll be able to explain that situation and go on. I think it's going to make a huge difference.

DUTTON: Well, I understand your point about safety, and I understand all of that. As a lawyer I'm wondering how, if I'm the prosecutor, how am I going to prove that the person who is charged with texting, how am I going to prove that they were indeed texting?

CRADDICK: Well, Mr. Dutton, the only way I can say is you're going to have the officer there that's arrested you and saw you texting.

DUTTON: He only saw you with the phone in your hand. He doesn't know what you were doing. He just saw you with the phone in your hand.

CRADDICK: I think they're going to have to use their common sense in that area, Mr. Dutton. They're going to have to decide if they're going to be able to prove that you were texting when they gave you the ticket.

DUTTON: Well, that's my concern about the bill. The bill doesn't set up any standards by which a prosecutor or the state would actually do that. I mean, is this going to be a crime where simply because you were holding the phone in your hand you could be found guilty of having violated the law regarding texting?

CRADDICK: I don't think that's correct, Mr. Dutton. I think any law enforcement officer is going to be prudent in what they do, and I think they're going to be able to prove that you were texting, or they won't be arresting you.

DUTTON: Well, that's what I'm curious about. They're not going to take your phone, which they can't do. You don't have to give them your cell phone provider. So the person says I wasn't texting, the officer says well he was. As a lawyer on the defense side, if I move to that side, my argument is going to be okay, well, prove it. And I don't know how that's going to happen, except they're going to have to take your phone, they're going to have to subpoena your cell phone records, or something is going to have to be put forth as evidence, other than the officer says I saw him with the phone or her with the phone, in his hand or her hand. Just holding a phone wouldn't be a problem.

CRADDICK: Mr. Dutton, you know as well as I know—what you'll have, Mr. Dutton, number one, is you're not going to be able to take their cell phone, you're not going to be able to get their records without a court order. You agree with that, correct?

DUTTON: Well, I agree that's the way the current law operates, but I don't know whether this law will change that.

CRADDICK: It does not change it. Let's get that straight right now. But you're going to have a sworn statement in the evidence by the officer.

DUTTON: That says what? What's the sworn statement going to say?

CRADDICK: That the officer witnessed you texting.

DUTTON: How can he do that if he wasn't in my car?

CRADDICK: Well, I think he'll be able to do that. How does he witness the seat belts?

DUTTON: Well, he sees the seat belt. He sees the seat belt unfastened.

CRADDICK: Same thing. I saw you wearing the seat belt.

DUTTON: But if I had my phone in my hand, can you tell me whether I'm texting now?

CRADDICK: I don't know whether you're texting or not, Mr. Dutton.

DUTTON: That's exactly my point, a police officer won't know that either. Just because I am holding my cell phone in my hand doesn't suggest that I am texting.

CRADDICK: Mr. Dutton, we've gone all through this before. You know, I have more confidence in our police people and our law enforcement across the state.

DUTTON: I appreciate your confidence, Mr. Craddick, but as a legislator and as a legislative body, I think what we have to do is give the instructions to the police and to the prosecutors on how to make this come alive. And if we're just simply saying texting is a crime, go out there and find it, go out there—and the police officer is going to say you were texting because he saw you holding the phone in your hand—that's a slippery slope to causing some problems that we don't currently have regarding any other law, any other statute we have, except public intoxication. That's the only one I think that's close to this, because public intoxication only requires that the police officer says he thinks you are a danger to yourself or others, and that was caused by some intoxicant that you may have taken. That's the only time. But for texting, what I don't understand is how, practically, it is going over. Let me ask you one final question then. Texting will become another element in probable cause for a police officer to stop you. Is that correct?

CRADDICK: Same as any other crime.

DUTTON: Sorry?

CRADDICK: Same as any other crime.

DUTTON: I assume that's a yes.

CRADDICK: Same as any other crime, Mr. Dutton.

DUTTON: Okay, so the police officer now can ride along and say I thought you were texting because I saw you holding the phone in your hand, and that would be enough, under this bill, to have a valid stop?

CRADDICK: I think, Mr. Dutton, that would probably be a valid stop. But I think then that the police officer would have to be willing to say that's what he was doing.

DUTTON: Well, it seems to me, Mr. Craddick, and I appreciate the work you put into this, but this is a long stretch toward eliminating and challenging some of the basic freedoms that people have. One of which is, I think you said it earlier, that, the way I read this, this puts the burden on the person to prove they were not texting.

CRADDICK: You know, Mr. Dutton, it does not. And I think this is no different than if you were speeding and you were pulled over, you were drinking and you were pulled over, or you're weaving down the road and you're pulled over, under distracted driving. We just disagree, Mr. Dutton.

DUTTON: You think that would be the same? I mean, I can see you weaving because I know where the lines are. I can see that you don't have your seat belt on because it doesn't appear. I can see it with my eyes. But when you start talking

about can you see whether I'm texting or not, that becomes a little different proposition, I believe. And I think you would have to agree with that. That's not the same thing, is it?

CRADDICK: Mr. Dutton, I have the confidence in our law enforcement people that they'll be able to take care of that.

DUTTON: Well, I'm equally as convinced, and I don't want this to be anti- or pro-law enforcement. But, you know, we have certain laws that prohibit law enforcement from doing certain things and engaging in certain conduct, because we want to provide for liberty for people in this country. If you're saying to just throw all that out the window, we don't care about that anymore, then yeah, I guess I would accept your opinion. But that's not my philosophy, and I'm just trying to figure out, practically, like I started, how this would actually work between law enforcement and the courthouse where somebody is going to have to appear to defend themselves on the basis of a charge that occurred because this bill said they could now be charged with texting while driving. Is there any reason we don't just make it part of the distracted driving statute?

CRADDICK: The distracted driving section has other things and does not cover that. That's why we're doing it. Mr. Dutton, if you want to specifically lay out how you want a police officer or a DPS officer to be effective, why don't you bring up an amendment and do that?

DUTTON: About wanting to do what?

CRADDICK: Why don't you, if you want to lay out how a police officer or a DPS officer is supposed to do this, why don't you come up here and offer the amendment?

DUTTON: I do have an amendment that would do that, because what my amendment simply says is, is that texting does not establish probable cause for an officer to stop someone.

CRADDICK: We'll be glad to debate it when you have it up here, Mr. Dutton.

DUTTON: Well, it's already up there. But I want to ask you about the practical effects of the bill. Maybe I should ask one of your counsel up there, because I see you keep getting advice from them, and perhaps they know a little more than you and I do, because I don't think you've answered my question yet. I just simply came up here to get an answer to why and how this would operate effectively on the street. Just simply passing a bill makes us feel good, but I don't think that it does much, except erode one of the freedoms that you and I cherish so dearly.

### **Amendment No. 1**

Representatives Cook and Craddick offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) as follows:

(1) On page 4, strike lines 18 through 22 and substitute the following:

(e) 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 a text-based communication.

(f) A political subdivision may by ordinance, rule, or other regulation prohibit or regulate the use of a portable wireless communication device, other than to read, write, or send a text-based communication, while operating a motor vehicle.

(2) Reletter subsequent subsections of added Section 545.4251, Transportation Code, accordingly.

(Crownover in the chair)

Amendment No. 1 was adopted.

### **Amendment No. 2**

Representative Craddick offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) as follows:

(1) On page 3, lines 24 and 25, strike added Section 545.4251(c)(1), Transportation Code.

(2) On page 4, lines 2 and 3, strike added Section 545.4251(c)(3), Transportation Code.

(3) Renumber the remaining subdivisions of added Section 545.4251(c), Transportation Code, accordingly.

Amendment No. 2 was adopted.

(Speaker in the chair)

### **Amendment No. 3**

Representatives Schofield and Burrows offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) on page 3, line 21, strike "and is outside a lane of travel".

Amendment No. 3 was adopted by (Record 85): 139 Yeas, 4 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Ashby; Aycock; Bell; Blanco; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Burns; Burrows; Button; Canales; Capriglione; Clardy; Coleman; Collier; Craddick; Crownover; Cyrier; Dale; Darby; Davis, S.; Davis, Y.; Deshotel; Dutton; Elkins; Faircloth; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Galindo; Geren; Giddings; Goldman; Gonzales; González; Guerra; Guillen; Harless; Hernandez; Herrero; Howard; Huberty; Hughes; Hunter; Isaac; Israel; Johnson; Kacal; Keffer; Keough; King, K.; King, P.; King, S.; Klick; Koop; Krause; Kuempel; Landgraf; Larson; Leach; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; Metcalf; Meyer; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Murr; Naishtat; Oliveira; Otto; Paddie; Parker; Paul; Peña; Phelan; Phillips; Pickett; Price; Raney; Raymond; Reynolds;

Riddle; Rinaldi; Rodriguez, E.; Rodriguez, J.; Romero; Rose; Sanford; Schaefer; Schofield; Schubert; Shaheen; Sheets; Simmons; Simpson; Smith; Smithee; Spitzer; Springer; Stephenson; Stickland; Thompson, E.; Thompson, S.; Tinderholt; Turner, C.; Turner, E.S.; Turner, S.; VanDeaver; Villalba; Vo; Walle; White, J.; White, M.; Workman; Wray; Wu; Zedler; Zerwas.

Nays — Bernal; Cook; Nevárez; Sheffield.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Dukes; Laubenberg; McClendon.

Absent — Gutierrez; King, T.

#### **Amendment No. 4**

Representative Rinaldi offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) on page 4 by striking lines 11 through 17 and substituting the following:

(d) Subsection (b) does not apply to an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a portable wireless communication device.

Amendment No. 4 was adopted.

#### **Amendment No. 5**

Representative Dutton offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) on page 5, by striking lines 12 through 16 and substituting the following:

(h) A peace officer may not stop a motor vehicle solely to determine whether the operator of the motor vehicle violated this section.

(i) A peace officer who stops a motor vehicle may not take possession of or otherwise inspect a portable wireless communication device in the possession of the operator to determine whether the operator of the motor vehicle violated this section unless authorized by the Code of Criminal Procedure, the Penal Code, or other law.

#### **AMENDMENT NO. 5 - REMARKS**

REPRESENTATIVE DUTTON: One of the issues, which I had the conversation with Speaker Craddick in regard to, is whether or not a police officer could establish probable cause based on his or her determination that a person was texting. That presents a couple of problems for me, at least one of which is, as I think I indicated, how does a police officer know whether you're texting on the phone or just holding the phone in your hand? How does he know that? But irrespective of that, the real problem I have with the bill is that it does establish probable cause to be stopped or pulled over simply because this statute is created. I don't think that that's good public policy at this point. This is not either pro or negative toward police officers.

What I'm suggesting to you is this has more to do with whether you ought to be free to travel. That that's what this is really about, it's about your ability to freely travel between one point and another and to what extent does this

legislature give an officer a reason to interfere with that travel. What this amendment does is simply say that a police officer may not stop a motor vehicle solely to determine whether that person was texting in that vehicle or not. So that's what the amendment does. I don't know if it's acceptable, but I do know that it's good public policy for us to make sure that people enjoy the right and the freedom to travel between point A and point B in this state and in this nation.

REPRESENTATIVE TINDERHOLT: Do you agree that most police officers have good intentions? Most?

DUTTON: I think being a police officer—when I grew up, that's what I wanted to be—and you know, as luck would have it, I had to come join you guys. But I think it's one of the best professions in this country, and so I agree that police officers have a job to do in this country, and most of them do that job quite well, in fact.

TINDERHOLT: Would you also agree that if this amendment were adopted that it could prevent profiling by that small minority of police officers out there that might not be doing the right thing?

DUTTON: That's the most frightening part of this bill because, as I mentioned earlier, Mr. Tinderholt, there's nothing in here that basically safeguards the freedoms that we like to have and enjoy. You know, the freedom of life and liberty; liberty being almost, to me, as important as life itself. This bill doesn't do anything but attack that, and what my amendment seeks to do is to make sure that you can't be attacked because you happen to be driving a vehicle and a peace officer suspects, or believes, or thinks that you happen to be texting on your phone.

TINDERHOLT: Well, Mr. Dutton, I, too, agree that most police officers have good intentions, but I support this amendment because of what it will do for that small minority of the officers that might use this as a reason to profile. So I appreciate this amendment and I will support it.

REPRESENTATIVE LUCIO: You know, I equate this bill to when we had our seat belt bill, when we had our DWI bill. In either one of those two bills, when an officer sees you swerving or not wearing your seat belt, they can stop you; that is probable cause to stop you. My underlying purpose is that we make our roads safer. I come from a large minority community, I understand Chairman Dutton's issues with profiling, with probable cause, with stopping people, and having any context in which our minority community could be impacted by this. But I do feel strongly that this particular issue, that this particular context that we're debating today is one of the most inherently dangerous things that we will ever be exposed to. Raising two young children, I've had several very close, dangerous encounters, with my children, on the road that were with people who were text messaging and didn't even realize that they ran me off the road. And it wasn't until I caught up with them that I realized that they were still looking at their phone. Now I understand Chairman—I hear you, Chairman Dutton, I understand your concern with probable cause, but I have yet to hear from any civil liberties community that when people are pulled over for not wearing their seat belt that

that law has been abused to discriminate against minority communities, nor have I seen that with DWI issues. And on this particular issue, I hold this to a dangerous enough standard that probable cause should be kept in the bill.

DUTTON: Now, probable cause you don't—based on what I believe I heard you say, is you agree that this can be abused.

LUCIO: I believe that for any reason that someone can be pulled over that there is absolutely the potential of abuse of, you know, a potential minority community.

DUTTON: And you're a lawyer, right?

LUCIO: Yes, sir.

DUTTON: And so you recognize the whole things that we have done, not only in this state but in this nation, to protect people's freedom from potential abuse.

LUCIO: I absolutely do and support you and stood with you on many pieces of legislation. Yes, sir.

DUTTON: And do you not agree then that we ought to provide the same protections in this bill that we provided in other instances regarding potential for abuse?

LUCIO: Can you give me a context in which we have clearly identified something that we want to make illegal to where we included in there probable cause language that is similar to what you're proposing in this today?

DUTTON: Well, the problem with this is that, you mentioned seat belts for example. A seat belt is, you would agree, larger than a phone right?

LUCIO: I'm sorry can you—

DUTTON: Would you agree that an officer can see a seat belt whether it's on or off?

LUCIO: Yes, sir.

DUTTON: But an officer who pulls up beside you and you have a phone in your hand, just as I do now, you can't tell what I'm doing back here can you?

LUCIO: No, I cannot.

DUTTON: Okay, and a police officer would be in the same position as you are, because he wouldn't be able to tell what a person is doing on that phone?

LUCIO: Not from his vantage point, no he will not.

DUTTON: All right, so why shouldn't we protect against potential abuse for a person being stopped on the basis of I thought you were texting on your phone or I just want to see if you were texting on your phone?

LUCIO: So how I see it, and you and I visited, is I think a trier of fact is going to have to determine whether or not they believe the officer and the officer's claim that that person was using their phone in violation of the law we're passing. I think that the public safety concerns that we are trying to address today are significant; and statistics have shown, and the heartbreaking stories have been heard, that we should make this an offense held to the same standards as other

violations such as drinking and driving or other things that put other people's lives at risk.

DUTTON: Let me ask you this: Is the potential for harm so great that we ought to outlaw people having phones in their vehicle?

LUCIO: No.

DUTTON: Well, I'm trying to figure out how far we can go with this then, because you're talking about the potential for harm in terms of not passing this, and I'm talking about the potential for harm if it is passed.

LUCIO: I think the industry has created technology that I believe, moving forward, will be required in every manufactured vehicle from this point forward that is going to make this less of an issue than it is today. The reason a majority of Texans wear seat belts today is because they don't want to hear the ding in their car, right? And that came about after years and years of advocacy that it was inherently dangerous not to wear a seat belt, and I think that that's where we're trending in the future. But to address the immediate need now, just like we did with seat belts, I think that this law is necessary to save lives.

DUTTON: But my amendment doesn't change the purpose for which you intend this bill, unless you intend the bill to cause police officers to stop more people.

LUCIO: I disagree. I think without probable cause, if your amendment was included, police officers wouldn't have the clarity necessary to make the traffic stops that they will make that will ultimately become a deterrent.

DUTTON: Well, if you read my amendment, it doesn't do what you just said.

LUCIO: I disagree. What your amendment says is they cannot stop—

DUTTON: Solely for the basis—

LUCIO: Right. So in order to write the ticket and to create an offense, which is the purpose of this bill, they would actually have to have done something else in addition to the text messaging.

DUTTON: Yes. Correct.

LUCIO: So we are making it a quasi-offense, per se. We can only charge you if we witness you doing something else, for example: not wearing your seat belt, or swerving, or smoking marijuana, or whatever it would be.

DUTTON: And you believe that police officers ought to have the unfettered right, without any—

LUCIO: I don't believe any law enforcement agency should have any unfettered right.

DUTTON: Well, then what right should they have not to stop you from enjoying the freedom of liberty to travel back and forth in this bill?

LUCIO: I understand where you're going, but in my experience I know in my heart of hearts that this is the most inherently dangerous thing we do on the road. So, I mean, when we talk about our liberties—

Representative Craddick moved to table Amendment No. 5.

DUTTON: Let me talk about what this amendment really does, but more especially let me tell you what this bill does. This bill opens up an opportunity for everybody in the State of Texas to be pulled over because a police officer may believe that they were texting. I mean, they may believe that. This is totally different than a seat belt because a police officer can see whether you have a seat belt on. It's totally different from failing to give a signal while changing a lane because a police officer can see you not give a signal when you're changing a lane. This is totally different than that. What we're now suggesting is that police officers who believe, who simply believe that you were texting, and if you happen to be holding your phone in your hand, they can say, well, I thought you were texting. Well, what about talking? What about your GPS that you're using on your phone? You get a ticket. The bill says that he can't take your phone. My amendment simply says that probable cause will not be established by simply an officer stopping you for texting. It says you can't use that as the basis for probable cause to stop you. That's really all it does. It doesn't do any violence to this bill. It allows, as I think the previous speaker indicated, this is about safety.

Well, I hate to tell you this folks, and most of you already know this, that usually when somebody tries to take away one of your liberties they tell you it's about safety. They tell you it's about safety because they want you to be scared to death of something. And they scare you first, and then they say you've got to give up one of your freedoms now because we've got to correct this. Well, they want to correct the idea of texting while driving, I understand that, I'm not opposed to that. What I am opposed to, though, is that I ought to have the liberty to drive from one place to the next without being unreasonably detained or stopped because somebody believes I was using my cell phone to text. That's really what this is about. And so if you don't mind your liberties being affected, taken away, challenged—and you know you have to ask yourself where does this end? Where does this end? Because today is the beginning of it, I'll tell you it's not the end of it. And so if you believe that, if you want to err on the side of giving up your liberties, then you vote to table my amendment. But if you want this amendment and you want to protect your liberties in this state while you drive from one place to another, then I suggest you vote with me and vote no on the motion to table. But you know what, members? It just occurred to me it's not about you and me. If you've got a teenage son or teenage daughter, that's who this is about. If you've got someone in your family who is driving, of driving age and driving a vehicle, that's who's going to be stopped. Because most of you are going to do like I did, you know the police officer stops you and you give him your legislative ID in hopes that that's enough. Well, most people in my district don't have a legislative ID, and so today, I'm asking you to vote no on the motion to table.

(Keffer in the chair)

The vote of the house was taken on the motion to table Amendment No. 5 and the vote was announced yeas 70, nays 69.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 86): 73 Yeas, 66 Nays, 2 Present, not voting.

Yeas — Alonzo; Anchia; Anderson, C.; Ashby; Aycock; Bernal; Blanco; Bonnen, D.; Bonnen, G.; Burkett; Button; Clardy; Cook; Craddick; Crownover; Cyrier; Darby; Davis, S.; Faircloth; Farney; Farrar; Fletcher; Frullo; Galindo; Geren; Giddings; Goldman; González; Harless; Hernandez; Howard; Hunter; Israel; Kacal; King, P.; King, S.; Koop; Kuempel; Larson; Longoria; Lozano; Lucio; Márquez; Meyer; Miller, D.; Miller, R.; Moody; Morrison; Murr; Naishtat; Otto; Paddie; Parker; Phillips; Pickett; Price; Raney; Raymond; Riddle; Schubert; Sheets; Sheffield; Simmons; Smith; Smithee; Stephenson; Thompson, E.; Turner, C.; VanDeaver; Villalba; Workman; Wu; Zerwas.

Nays — Allen; Alvarado; Anderson, R.; Bell; Bohac; Burns; Burrows; Canales; Capriglione; Collier; Dale; Davis, Y.; Deshotel; Dutton; Elkins; Fallon; Farias; Flynn; Frank; Gonzales; Guerra; Guillen; Gutierrez; Herrero; Huberty; Hughes; Isaac; Johnson; Keough; King, K.; Klick; Krause; Landgraf; Leach; Martinez; Martinez Fischer; Metcalf; Miles; Muñoz; Nevárez; Paul; Peña; Phelan; Reynolds; Rinaldi; Rodriguez, J.; Romero; Rose; Sanford; Schaefer; Schofield; Shaheen; Simpson; Spitzer; Springer; Stickland; Thompson, S.; Tinderholt; Turner, E.S.; Turner, S.; Vo; Walle; White, J.; White, M.; Wray; Zedler.

Present, not voting — Mr. Speaker; Keffer(C).

Absent, Excused — Dukes; Laubenberg; McClendon.

Absent — Coleman; King, T.; Murphy; Oliveira; Rodriguez, E.

The chair stated that the motion to table Amendment No. 5 prevailed by the above vote.

#### STATEMENTS OF VOTE

When Record No. 86 was taken, my vote failed to register. I would have voted yes.

Oliveira

When Record No. 86 was taken, I was temporarily out of the house chamber. I would have voted no.

E. Rodriguez

#### LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business:

T. King on motion of Elkins.

The following member was granted leave of absence temporarily for today to attend a funeral:

E. Rodriguez on motion of Oliveira.

The following member was granted leave of absence for the remainder of today because of important business in the district:

Coleman on motion of Herrero.

**CSHB 80 - (consideration continued)**

**Amendment No. 6**

Representative Dutton offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) on page 5, by striking lines 12 through 16 and substituting the following:

(h) A peace officer may not stop a motor vehicle for the sole purpose of determining whether the operator has violated this section, but may, if the officer has probable cause to stop the motor vehicle for another offense, determine whether the operator of the motor vehicle is in violation of this section.

(i) A peace officer who stops a motor vehicle may not take possession of or otherwise inspect a portable wireless communication device in the possession of the operator to determine whether the operator of the motor vehicle violated this section unless authorized by the Code of Criminal Procedure, the Penal Code, or other law.

Amendment No. 6 was withdrawn.

**Amendment No. 7**

Representative Dutton offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) as follows:

(1) Strike SECTION 5 of the bill (page 3, line 7 through page 5, line 16) and substitute the following:

SECTION 5. Section 545.401, Transportation Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) For the purposes of Subsection (a), a person drives a vehicle in wilful or wanton disregard for the safety of persons or property if the person uses a portable wireless communication device to read, write, or send a text-based communication, including an SMS text, e-mail, instant message, or other form of electronic data retrieval or electronic data communication, while operating a motor vehicle unless the vehicle is stopped and is outside a lane of travel.

(2) Strike SECTION 6 of the bill (page 5, lines 17 through 23) and renumber subsequent SECTIONS accordingly.

(3) On page 5, lines 24 and 25, strike "Sections 545.424 and 545.425, Transportation Code," and substitute "Chapter 545, Transportation Code,".

**AMENDMENT NO. 7 - REMARKS**

REPRESENTATIVE DUTTON: The argument for this bill has been that this is about public safety. Well, the way the bill is currently drafted it's a Class C misdemeanor. A Class C misdemeanor is like a traffic ticket. What this amendment does, this makes it a crime. It makes it a Class B misdemeanor where you can go to jail for doing it, and so that's really all it does. So I'd ask you to stay with me on the amendment.

REPRESENTATIVE HARLESS: Members, I think you need to pay attention to this amendment. What he said is actually accurate and true. It takes the bill from a Class C misdemeanor, \$100 fine, to a Class B offense which can be a fine up to \$4,000 and will result in jail time. So I ask that you table this amendment.

Representative Harless moved to table Amendment No. 7.

DUTTON: Now we know that this bill is not about public safety, because if they really wanted to make it safe, and the intention was to keep people from texting at all, what better way than to increase the penalty? I mean, most people don't want a Class B misdemeanor on their record. If this amendment goes on, it will simply be a Class B misdemeanor. The word will go out in Texas that the Texas legislature passed this bill with this amendment on it making it a Class B misdemeanor. And so if it's not about safety, then what is this really about?

REPRESENTATIVE STICKLAND: Representative Dutton, do I understand this correctly, that the same people who are trying to pass this bill in the name of public safety are now opposing your measure to strengthen it from that aspect?

DUTTON: Absolutely, that's what I think they're doing.

STICKLAND: So with them trying to table this amendment, how are any of us supposed to think that this bill is about public safety?

DUTTON: Well, that's the reason I offer the amendment, because I just figured that if they want to do public safety, let's do public safety. If they want to make it about something else, they should come out and say that. When they didn't take my amendment on establishing probable cause as a basis for texting—or eliminating probable cause as a basis for texting—they said it was about safety and how we needed to make the roads safe. I think one speaker even said this is the worst tragedy that we have in this state, and if it is the worst tragedy, I don't know how making it a Class C misdemeanor and making it a \$25 fine is going to do much to make us any safer. And so I put my amendment up because I think if you really want to make it about public safety, let's make it about public safety; and public safety requires us to do things that provide a penalty for which people will change their behavior. I think most people in Texas, even more people in Texas, will change their behavior if it were a Class B misdemeanor. And so that's the reason for my amendment. In addition to that, I think the people who are sponsoring this bill are being a little disingenuous when they get up here and argue that it's about public safety, but then they turn around and argue against my amendment, Mr. Stickland. And so I would ask you to vote no on the motion to table.

The motion to table prevailed by (Record 87): 126 Yeas, 9 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Ashby; Aycock; Bernal; Blanco; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Burns; Burrows; Button; Capriglione; Clardy; Collier; Cook; Craddick; Crownover; Cyrier; Darby; Davis, S.; Davis, Y.; Elkins; Faircloth; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Galindo; Geren; Goldman;

Gonzales; González; Guerra; Guillen; Harless; Hernandez; Herrero; Howard; Huberty; Hughes; Hunter; Isaac; Israel; Johnson; Kacal; King, K.; King, P.; King, S.; Klick; Koop; Krause; Kuempel; Landgraf; Larson; Longoria; Lozano; Lucio; Márquez; Martínez Fischer; Metcalf; Meyer; Miles; Miller, D.; Miller, R.; Moody; Morrison; Murr; Naishtat; Nevárez; Oliveira; Otto; Paddie; Parker; Paul; Peña; Phelan; Phillips; Pickett; Price; Raney; Raymond; Reynolds; Riddle; Rinaldi; Rodriguez, J.; Romero; Rose; Sanford; Schaefer; Schofield; Schubert; Shaheen; Sheets; Sheffield; Simmons; Smith; Smithee; Spitzer; Springer; Stephenson; Stickland; Thompson, E.; Thompson, S.; Tinderholt; Turner, C.; Turner, S.; VanDeaver; Villalba; Walle; White, J.; White, M.; Workman; Wray; Wu; Zedler; Zerwas.

Nays — Canales; Dale; Dutton; Keough; Martinez; Muñoz; Murphy; Simpson; Vo.

Present, not voting — Mr. Speaker; Keffer(C).

Absent, Excused — Coleman; Dukes; King, T.; Laubenberg; McClendon; Rodriguez, E.

Absent — Bell; Deshotel; Giddings; Gutierrez; Leach; Turner, E.S.

#### STATEMENTS OF VOTE

When Record No. 87 was taken, I was in the house but away from my desk. I would have voted yes.

Deshotel

When Record No. 87 was taken, I was shown voting no. I intended to vote yes.

Keough

When Record No. 87 was taken, I was excused to attend a funeral. I would have voted yes.

E. Rodriguez

#### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

#### CSHB 80 - (consideration continued)

#### Amendment No. 8

Representative Canales offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) on page 3, lines 12 through 15 by striking "data that is read from or manually entered into a wireless communication device, including an SMS text, e-mail, instant message, or other form of electronic data retrieval or electronic data communication" and substituting "data, other than a telephone number or global positioning system

data, that is read from or manually entered into a wireless communication device for the purpose of communicating with another person, including an SMS text, e-mail, instant message".

Amendment No. 8 was adopted.

### **Amendment No. 9**

Representative Smithee offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) as follows:

(1) On page 3, line 8, strike "Section 545.4251" and substitute "Sections 545.4251 and 545.4253".

(2) On page 5, lines 2 through 11, strike Subsection (g) and reletter subsequent subsections accordingly.

(3) On page 5, between lines 16 and 17, insert:

Sec. 545.4253. NOTIFICATION OF STATE LAWS ON USE OF WIRELESS COMMUNICATION DEVICE; SIGNS REQUIRED. (a) In this section:

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

(2) "Rest area" means public real property designated as a rest area, comfort station, picnic area, roadside park, or scenic overlook by the Texas Department of Transportation.

(b) The Texas Department of Transportation shall post a sign providing notice to an operator of a motor vehicle of the laws that apply to the use of a wireless communication device while operating a motor vehicle in this state:

(1) at each point at which an interstate highway or United States highway enters this state;

(2) in a prominent location at each rest area; and

(3) at each exit point from a public airport on a road maintained by the Texas Department of Transportation.

(c) The Texas Department of Transportation shall by rule adopt standards for signs described by Subsection (b).

(d) A sign posted under Subsection (b) must inform an operator of a motor vehicle that:

(1) the use of a portable wireless communication device to read, write, or send a text-based communication while operating a motor vehicle is prohibited in this state;

(2) the use of a wireless communication device while operating a motor vehicle in a school crossing zone or on school property is prohibited in this state under certain circumstances;

(3) additional restrictions on the use of a wireless communication device while operating a motor vehicle may apply in political subdivisions; and

(4) the operator is subject to a fine if the operator uses a wireless communication device in violation of a state or local law.

(e) The Texas Department of Transportation shall include on any state highway map published by that department the information described by Subsection (d).

(4) On page 5, lines 24 and 25, strike "to Sections 545.424 and 545.425, Transportation Code" and substitute "Chapter 545, Transportation Code".

Amendment No. 9 was withdrawn.

### **Amendment No. 10**

Representative Smithee offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) as follows:

(1) On page 3, line 8, strike "Section 545.4251" and substitute "Sections 545.4251 and 545.4253".

(2) On page 5, lines 2 through 11, strike Subsection (g) and reletter subsequent subsections accordingly.

(3) On page 5, between lines 16 and 17, insert:

Sec. 545.4253. NOTIFICATION OF STATE LAWS ON USE OF WIRELESS COMMUNICATION DEVICE; SIGNS REQUIRED. (a) In this section:

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

(2) "Rest area" means public real property designated as a rest area, comfort station, picnic area, roadside park, or scenic overlook by the Texas Department of Transportation.

(b) The Texas Department of Transportation shall post a sign providing notice to an operator of a motor vehicle of the laws that apply to the use of a wireless communication device while operating a motor vehicle in this state:

(1) at each point at which an interstate highway or United States highway enters this state;

(2) in a prominent location at each rest area; and

(3) at each exit point from a public airport on a road maintained by the Texas Department of Transportation.

(c) The Texas Department of Transportation shall by rule adopt standards for signs described by Subsection (b).

(d) A sign posted under Subsection (b) must inform an operator of a motor vehicle that:

(1) the use of a portable wireless communication device to read, write, or send a text-based communication while operating a motor vehicle is prohibited in this state;

(2) the use of a wireless communication device while operating a motor vehicle in a school crossing zone or on school property is prohibited in this state under certain circumstances;

(3) additional restrictions on the use of a wireless communication device while operating a motor vehicle may apply in political subdivisions; and

(4) the operator is subject to a fine if the operator uses a wireless communication device in violation of a state or local law.

(e) The Texas Department of Transportation shall include on any state highway map published by that department the information described by Subsection (d).

(4) On page 5, lines 24 and 25, strike "to Sections 545.424 and 545.425, Transportation Code" and substitute "Chapter 545, Transportation Code".

Amendment No. 10 was adopted.

### **Amendment No. 11**

Representative Dutton offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) as follows:

(1) Strike SECTION 5 of the bill (page 3, line 7 through page 5, line 16) and substitute the following:

SECTION 5. Section 545.401, Transportation Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A person commits an offense if:

(1) the person uses a portable wireless communication device to read, write, or send a text-based communication, including an SMS text, e-mail, instant message, or other form of electronic data retrieval or electronic data communication, while operating a motor vehicle; and

(2) the conduct described by Subdivision (1) results in a motor vehicle accident.

(2) Strike SECTION 6 of the bill (page 5, lines 17 through 23) and renumber subsequent SECTIONS accordingly.

(3) On page 5, lines 24 and 25, strike "Sections 545.424 and 545.425, Transportation Code," and substitute "Chapter 545, Transportation Code,".

Amendment No. 11 was withdrawn.

### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 5).

(Speaker in the chair)

### **HR 1545 - ADOPTED (by Martinez Fischer)**

Representative Martinez Fischer moved to suspend all necessary rules to take up and consider at this time **HR 1545**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1545**, Commemorating the 2015 Vietnam Veterans Day ceremony being hosted by Veterans of Foreign Wars Post No. 76 in San Antonio.

**HR 1545** was adopted.

On motion of Representative Martinez Fischer, the names of all the members of the house were added to **HR 1545** as signers thereof.

**CSHB 80 - (consideration continued)****Amendment No. 12**

Representative Simpson offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee report) as follows:

(1) On page 5, lines 2 through 4, strike "The Texas Department of Transportation shall post a sign at each point at which an interstate highway or United States highway enters this state" and substitute "The governmental entity responsible for maintaining a road that crosses a border of this state shall post a sign at the point where the road enters the state".

(2) On page 5, between lines 11 and 12, insert the following:

(g-1) A governmental entity in which a public airport is located shall also post signs described by Subsection (g) at each exit point from a public airport on a road maintained by the governmental entity.

(g-2) A governmental entity may not enforce this section unless the governmental entity complies with the requirements of Subsections (g) and (g-1).

Representative Craddick moved to table Amendment No. 12.

The motion to table prevailed by (Record 88): 109 Yeas, 29 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anderson, C.; Anderson, R.; Ashby; Aycock; Blanco; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Burns; Burrows; Button; Clardy; Cook; Craddick; Crownover; Cyrier; Darby; Davis, S.; Davis, Y.; Elkins; Faircloth; Fallon; Farney; Farrar; Flynn; Frullo; Galindo; Geren; Giddings; Goldman; Gonzales; Guerra; Gutierrez; Harless; Hernandez; Herrero; Howard; Huberty; Hunter; Isaac; Israel; Johnson; Kacal; Keough; King, K.; King, P.; King, S.; Klick; Koop; Kuempel; Landgraf; Larson; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; Metcalf; Meyer; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murr; Naishtat; Nevárez; Oliveira; Otto; Paddie; Parker; Paul; Phelan; Phillips; Pickett; Price; Raney; Raymond; Reynolds; Riddle; Romero; Rose; Sanford; Schofield; Schubert; Shaheen; Sheets; Sheffield; Simmons; Smith; Spitzer; Springer; Thompson, E.; Thompson, S.; Turner, E.S.; Turner, S.; VanDeaver; Villalba; Vo; White, J.; Workman; Wray; Wu; Zerwas.

Nays — Anchia; Bell; Bernal; Canales; Capriglione; Collier; Dale; Dutton; Farias; Frank; Guillen; Hughes; Krause; Leach; Miles; Murphy; Peña; Rinaldi; Rodriguez, J.; Schaefer; Simpson; Smithee; Stephenson; Stickland; Tinderholt; Turner, C.; Walle; White, M.; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman; Dukes; King, T.; Laubenberg; McClendon; Rodriguez, E.

Absent — Deshotel; Fletcher; González; Keffer.

### STATEMENTS OF VOTE

When Record No. 88 was taken, I was shown voting yes. I intended to vote no.

Bohac

When Record No. 88 was taken, I was shown voting no. I intended to vote yes.

Capriglione

When Record No. 88 was taken, my vote failed to register. I would have voted no.

Deshotel

When Record No. 88 was taken, I was excused to attend a funeral. I would have voted yes.

E. Rodriguez

#### Amendment No. 13

Representative Dutton offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee printing) on page 5, between lines 16 and 17, by inserting the following:

(i) Not later than January 31 of each year, each law enforcement agency shall report to the legislature and the Department of Public Safety the number of persons issued a citation for an offense under this section and the race of each person issued a citation.

Representative Craddick moved to table Amendment No. 13.

The motion to table prevailed by (Record 89): 83 Yeas, 58 Nays, 1 Present, not voting. (The vote was reconsidered later today, and Amendment No. 13 was withdrawn.)

Yeas — Alonzo; Anderson, C.; Anderson, R.; Ashby; Aycock; Bell; Bonnen, D.; Bonnen, G.; Burkett; Burns; Burrows; Button; Clardy; Cook; Craddick; Crownover; Cyrier; Darby; Davis, S.; Fallon; Farney; Fletcher; Frullo; Galindo; Geren; Goldman; Harless; Howard; Hunter; Isaac; Israel; Kacal; Keffer; Keough; King, K.; King, P.; King, S.; Koop; Kuempel; Landgraf; Larson; Leach; Lozano; Metcalf; Meyer; Miller, D.; Miller, R.; Moody; Morrison; Murr; Naishtat; Otto; Paddie; Parker; Paul; Phelan; Phillips; Pickett; Price; Raney; Rinaldi; Schaefer; Schofield; Schubert; Shaheen; Sheets; Sheffield; Simmons; Smith; Spitzer; Springer; Stephenson; Thompson, E.; Turner, E.S.; VanDeaver; Villalba; White, J.; White, M.; Workman; Wray; Wu; Zedler; Zerwas.

Nays — Allen; Alvarado; Anchia; Bernal; Blanco; Bohac; Canales; Capriglione; Collier; Dale; Davis, Y.; Deshotel; Dutton; Elkins; Faircloth; Farias; Farrar; Frank; Giddings; Gonzales; González; Guerra; Guillen; Gutierrez; Hernandez; Herrero; Huberty; Hughes; Johnson; Klick; Krause; Longoria; Lucio; Márquez; Martinez; Martinez Fischer; Miles; Muñoz; Murphy; Nevárez;

Oliveira; Peña; Raymond; Reynolds; Riddle; Rodriguez, J.; Romero; Rose; Sanford; Simpson; Smithee; Stickland; Thompson, S.; Tinderholt; Turner, C.; Turner, S.; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman; Dukes; King, T.; Laubenberg; McClendon; Rodriguez, E.

Absent — Flynn.

### STATEMENTS OF VOTE

When Record No. 89 was taken, I was in the house but away from my desk. I would have voted yes.

Flynn

When Record No. 89 was taken, I was shown voting yes. I intended to vote no.

Springer

### CSHB 80 - REMARKS

REPRESENTATIVE KEOUGH: Did you know, according to the National Highway Traffic Safety Administration, that in 2011, there were 29,757 people killed in distraction-based accidents? Excuse me, were killed in accidents. In distraction-based accidents, 3,331 people were killed, and of those, 385 were associated with texting or telephones. That's 12 percent of the group that was in distraction-based accidents. Did you know that?

REPRESENTATIVE CRADDICK: I'll take your word for it.

KEOUGH: Okay. In 2012, it's virtually the same thing. It was another 12 percent. Now, of that group of distraction-affected crashes, okay, which is about 3,000 or so, 78 percent involved some other distraction. Only 12 percent in those, according to the National Highway Traffic Safety Administration, only 12 percent had to do with texting. Now, I'm genuinely curious, and I hope some others are as well, if of all the accidents that took place in distraction-based issues only 12 percent had to do with telephone or texting, that means that 78 percent of those did not. What do you think about that? Help me with this.

CRADDICK: I think this: I don't care if it's one percent, it's too much. It's a ridiculous situation. In the state poll, you can poll your own poll if you want. All the statewide polls show that people are unanimously for doing away with texting while driving. You know, maybe I look at it differently than you do. A&M submitted a study to us that said it could save 90 lives in the State of Texas. You know what, if it can save one life, it makes a difference to me.

KEOUGH: I do not disagree with your basic premise. As a matter of fact, I am in general agreement with any laws that save lives. My concern about this, though, is that we pass this law, but we know that 78 percent of all the fatalities are something other than that. Now this same organization, which is by the way the one that you used for the data that you gave us when we came in, same

organization, that's where I got this from, they say that reaching for an object is a distraction, writing and reading, putting makeup on and grooming, dialing a number on your telephone, eating and drinking. I mean, should we pass a law so that women can't put makeup on in their car?

CRADDICK: They're under the distracted driving law.

KEOUGH: No, they're not.

CRADDICK: You can be pulled over for that.

KEOUGH: No, the distracted driving law has to do with only four entities. Let me finish. They have to do on, ban on cell use by a novice, ban on text use by a novice, ban on text in bus drivers, and ban on cell use in school zones.

CRADDICK: Okay, I think. Let me say this, we shouldn't pass one. This is a really unique thing. I've said early on that statistics have shown, and testimony has shown, that the item in your brain that you use to text is the same as you use to drive.

KEOUGH: Correct.

CRADDICK: And obviously when 45 other states in the country have passed this, it obviously looks like a need to the rest of the country. And I think that when 38 cities go out and pass it because our governor vetoed it, so now we have a mish-mash of 38 cities that have different laws, I think we need a uniform law in this state, and that's what you're getting with this bill.

KEOUGH: Okay. Did you know that the same visual acuity and activity that is used in texting is the same visual acuity and activity that is used when you go to change your navigation screen? Should we have a law against doing that? First question, if I may. The second question is the same one as changing your radio.

CRADDICK: I have no idea.

KEOUGH: That's what that report says where you got that information from. And so this visual acuity issue is not just about texting, it's about many other accepted issues. And you know what, if we could figure out a way to pass all these things and get better technology to avoid it, I'm all for it. I want to save lives just like you. My concern is, is that here we are passing one specific law that's 12 percent of the total, and you have 78 percent that we know has similar characteristics, but we're not passing laws on those. The question is, where does it end?

CRADDICK: Let me ask you a question. What percentage of those accidents were DWIs?

KEOUGH: Those are not included in this. That's a different category, according to NHTSA. And there are already laws against DWI. There's not a law that has to do with this. It's only about young people, recent to now, and some commercial drivers. So I guess my question is this, as a new legislator coming in here, I have come to the conclusion that part of what we do here is not just passing laws, but keeping laws from passing and guaranteeing, certainly freedoms, but at the same time, protecting lives. My issue with this is that if we pass a law based upon

visual acuity, then we must include navigation. Do we want to include that? We must include changing the radio, we must include changing the temperature, and you know, while we're at it, visual acuity is affected by that person who is sitting next to you or is driving. One of the major causes of accidents, especially among young people, is a distraction by someone else in the car. So should we have another law that says they can't be in the car, or that somebody under 18? I mean there's no end to where we could pass laws, is what my concern is. Again, I am with you in favor of saving lives, Dean Craddick, I am. I want to save lives. But if you say we can save one life by women not putting on makeup in the car, then we ought to pass a law for that, don't you agree?

CRADDICK: I think if you want to do that you can introduce a bill to do it.

KEOUGH: Did you know—two last questions. As I look at this and I look at the enforcement of this, did you know that this bill, if made law, and even if we give a pass to officers, they have to use the very tools that we are prohibiting in order to stop the average citizen and give them a ticket? In other words, they use the very thing you're trying to eliminate in order to catch those who are doing what you're trying to eliminate.

CRADDICK: Well, let me tell you this, I think as a legislator it's our responsibility to give tools that our law enforcement needs to enforce the laws in this state, and that's what we're doing here today.

KEOUGH: Okay, one last question. You said at the beginning of your discussion, I can't quote it exactly, but you said 95 percent of people who have a new traffic law will obey that law.

CRADDICK: That's what statistics say.

KEOUGH: Okay. Did you know that the young lady that this law is based on, that you brought forth and based it on this, March 12 or March 14, 2012, was not wearing her seat belt and was texting, and she was underage?

### **REMARKS ORDERED PRINTED**

Representative Keough moved to print remarks between Representative Craddick and Representative Keough.

The motion prevailed.

(E. Rodriguez now present)

#### **Amendment No. 13 - Vote Reconsidered**

Representative Phillips moved to reconsider the vote by which Amendment No. 13 was tabled.

The motion to reconsider prevailed.

Amendment No. 13 was withdrawn.

#### **Amendment No. 14**

Representative Dutton offered the following amendment to **CSHB 80**:

Amend **CSHB 80** (house committee printing) on page 5, between lines 16 and 17, by inserting the following:

(i) Not later than January 31 of each year, each law enforcement agency shall report to the legislature and the Department of Public Safety the number of persons issued a citation for an offense under this section and the race of each person issued a citation.

(j) the provision in (i) above applies only to counties with a population above 400,000.

#### AMENDMENT NO. 14 - REMARKS

REPRESENTATIVE DUTTON: Okay, Mr. Speaker and members, this is an amendment that I think Chairman Phillips talked about. It now has a language in it that applies to counties 400,000 and above, and I move adoption of amendment. I think it's acceptable.

REPRESENTATIVE SCHOFIELD: We have just decided that counties over 400,000 are racist. I am against that. I am against this amendment for the same reason I was against the original one. I move to table the amendment, and I ask you to vote with me.

REPRESENTATIVE LUCIO: The reason we bracketed to 400,000 or above is from a cause standpoint and a technology standpoint. It has nothing to do with the makeup of these counties. Essentially, counties, which I included my own in there, have the technology and the computers available to draft these reports at no additional cost to the county. There were some minority members that were upset with the way that amendment was presented and voted down. If you have some concerns, if you don't want this to be used to discriminate against minority communities, and you feel like me—the reason I am for this new amendment, as drafted, is because I truly believe that this will not be used to discriminate against minority communities, and this will be the proof that I need to make that affirmative. I move to support this amendment.

REPRESENTATIVE CANALES: Is it the intent of the author, or are you accepting this amendment, to allude or believe that counties with 400,000 or more are racist?

LUCIO: No, sir. My county is 400,000 or more. I don't believe that I've ever experienced anything like that, you know, and I'm fortunate. I'm from a 92 percent or plus Hispanic community.

CANALES: Would you agree with me that that statement being made would almost be offensive?

LUCIO: I could understand. People have deep-rooted beliefs. I don't agree with that statement.

REPRESENTATIVE SPRINGER: There's nothing in this that would keep us from coming back next session and if there were some issues that came up, that we could either lower it, or raise it, or remove it.

LUCIO: That's correct. What we want is at least some initial feedback, so that if there are concerns that people bring up regarding civil liberties and possible profiling, that we'll have some information. The 400,000 requirement was my idea from a cost standpoint and an infrastructure standpoint, and that's all.

SPRINGER: And I agree. And wouldn't you agree that it's a reasonable sample size that we would take in? If we do have things, like I said, we can either come back, go to 50, or we can go down to 285, and that way we would catch everybody in my district.

LUCIO: Yes, sir. Absolutely. Great point, well put. Sample size is a good way of looking at it.

SPRINGER: I agree.

REPRESENTATIVE SHEETS: Representative Lucio, I just have a quick question trying to clarify something, because for some of us that represent large counties, our concern is that we're being treated differently here. We're concerned that we may be putting an unfunded mandate on our law enforcement agencies in larger counties. Can you address that for me, please?

LUCIO: Yes, sir. One of my dearest friends is the technology director for my county. I called him and asked would this be an additional burden, and he said I can generate that without buying any additional software, or computers, or whatever. There was some concern, and frankly, the more diverse communities that would be a great sample size are those of the population limit that I've placed or higher. Our counties of this size or larger have the infrastructure necessary to generate these reports without any additional costs.

SHEETS: Okay. Additionally, my concern is, because I represent Dallas County, and specifically, I represent the City of Dallas, the City of Garland, and the City of Mesquite. I know the City of Dallas can probably do this. Do we know if some of our suburban cities that are in Dallas County, such as Garland and Mesquite, have the capabilities do this?

LUCIO: From what I'm being told, this information is already being generated, it's just not extrapolated for this offense, because the offense doesn't exist. So the information is already reported and required, I think through other mandates, or other provisions of law, or other bills that we've already passed. What this will do is extrapolate it specifically for this offense so that we can review it to determine if there's any unintended consequences, like profiling, or any racist implications.

Representative Schofield moved to table Amendment No. 14.

DUTTON: This has been a long day, but I hope that it being long didn't mean that it somehow or another got on a track that I didn't intend for it to go. There's been language used, I think, on this house floor suggesting that somehow or another this made some counties racist. That was somehow or another, something that this amendment never intended to do. As you all know, we bracket bills around here all the time, and they do many different things, but they're not intended to suggest that one county is bad and one county is good. It's simply a means by which we sometimes try to perfect an amendment so that it shines the

light brightest where it needs to shine. And so that's what this amendment attempts to do. It is not an attempt to disparage any county in the State of Texas. I think all 254 counties in the amendment I had previously would have been affected. I was asked whether or not changing it so that counties that have 400,000 and above would be affected, and I agreed to that. And I agreed to that because I believe that filing this report is going to help us understand better whether or not what we've done here is effective or whether or not what we've done here has caused some unintended consequences.

REPRESENTATIVE SANFORD: As Representative Lucio mentioned a moment ago that his county is 92 percent Hispanic, and as the amendment is drafted, if we think about the reporting that we would expect from his county, as with all the amendment, we would expect 92 percent, or maybe more, of the offenses to be reported as Hispanic, would we not?

DUTTON: You would think so. If the world were perfect, yes.

SANFORD: How would that be helpful? We're talking about shining the light of day on this, how would that be helpful? What context do we have?

DUTTON: If you assume the facts that you've entered, I don't know that they're helpful. But if everywhere in the whole State of Texas or in the counties that are affected by it have those same percentages, it would be helpful because what it would suggest is that this law is being applied appropriately despite the subjectivity of the offense.

SANFORD: Would we need to know the context and the racial makeup of that county to be able to interpret that?

DUTTON: We already know that.

SANFORD: Will it be reported along with the—

DUTTON: It's already reported. I can give you the stats on your county, if you'd like.

SANFORD: Thank you, I can find those without any problem myself. But wouldn't it be helpful if they were reported alongside this, so that we have the proper context, would be my question.

DUTTON: Well, that's already available. What we're trying to do with this amendment is obtain information that is currently unavailable.

SANFORD: Okay, so when we receive that information, we'll have to pull that information and then the data from another source, so that we can have the right context. Would that be correct?

DUTTON: Yeah, that's right.

REPRESENTATIVE GIDDINGS: Mr. Dutton, I think for the most part the information that we're looking for already is required to be reported by law enforcement officers, based on some legislation that we passed here some years ago. But, basically, because of our concern that there may be a likelihood that certain people will be pulled over, perhaps without cause, we want to isolate this particular incident and examine it after a year or so?

DUTTON: Well, the real problem, Chairwoman Giddings, is the subjectivity that's inherent in the application of this particular statute. The way the bill is drafted, it requires that the officer make certain judgment, apply certain judgment factors, and his subjectivity is always going to be in question, I suppose, when that happens. But what this bill does, what this amendment does, is simply look at it from the standpoint of let's see if we can report—have a report that helps us, because as you mentioned, crimes are already reported by race, I mean the total—but what this does is says this particular offense will be reported by race. And again, that's related to the subjectivity in the bill.

GIDDINGS: Exactly. And in the case of a county that may be 80 percent Hispanic or 80 percent black, certainly the person that's looking at that report, will understand the disproportionality that we're looking for, no matter who it appears is being arrested or pulled over at a disproportionate rate.

DUTTON: Yeah, I don't want to presuppose what the data will suggest because we all will leave here hoping that this law will be applied the way we intended it.

GIDDINGS: Okay.

DUTTON: But the reality is we don't know that. So this is just a good data collection point that will help bring that to awareness.

GIDDINGS: It's just a check and balance, is it not?

DUTTON: Yes.

GIDDINGS: So we can have some security that we've done what we need to do.

DUTTON: Exactly.

SCHOFIELD: Mr. Dutton, am I correct in understanding that under current law, before this bill is even passed, every law enforcement agency already has a report on racial profiling and data, with respect to their operations?

DUTTON: That is, to my understanding—that is correct.

SCHOFIELD: That was my objection to the original Amendment No. 13. To me, it seemed gratuitous. It seemed like it implied that we would be enforcing this racially, because we already collect this data, so it sort of seemed gratuitous to put it on this bill. That's why I voted to table. It had nothing to do with the population size.

DUTTON: Well, maybe I can help you with it, because I think you're missing a point here.

SCHOFIELD: Then I would be happy to be instructed, if that's the case.

DUTTON: Let me see if I can help you get there. The bill that's currently drafted, would you agree that the application of that is quite subjective on the part of an officer?

SCHOFIELD: To be fair, I'm not planning on voting for the bill. I have a number of concerns with it. I don't know if you could say it's subjective, because they would have to see the phone.

DUTTON: Well, you can see a phone, but you can't see them texting. That's the whole point. I think you'll understand. You understand what I'm saying? You can see the phone, but just because someone has a phone in their hand is not enough to say, definitively, that they were texting.

SCHOFIELD: Your point was that it's subjective.

DUTTON: Right. And the more subjective the application is, the more prone it is to have a problem related to how it's applied. Would you agree with me?

SCHOFIELD: Yes.

DUTTON: So what I'm trying to do, though, if you follow me through that—what I'm trying to do is at least shed some light on it so that we can make our own determination as to whether or not it's disproportionately applied.

SCHOFIELD: Now, I understand your amendment as a rhetorical device, pointing out a hole in the bill. But what I'm talking about in terms of the law, if this passed without your amendment, they'd still have to do it because they do it with respect to everything?

DUTTON: Yes, but they wouldn't do it in terms of this particular offense. This offense wouldn't be singularly pointed out in that; and I'm trying to focus the light not on the total, but on this particular offense.

SCHOFIELD: And I'll be honest with you, I know we have a difference of opinion on this in general. In general, I prefer to get past race and move on to treating us all the same. All I'm trying to say is, my objection that led me to vote to table your initial amendment was not cured by a population bracket. That's all I wanted to say, and thank you for your patience.

DUTTON: I don't know that I can fix it so that you would support it.

The vote of the house was taken on the motion to table Amendment No. 14 and the vote was announced yeas 71, nays 70.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 90): 77 Yeas, 65 Nays, 1 Present, not voting.

Yeas — Anderson, C.; Anderson, R.; Ashby; Aycocock; Bell; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Burns; Button; Clardy; Craddick; Crownover; Dale; Darby; Davis, S.; Faircloth; Fallon; Farney; Fletcher; Flynn; Frank; Frullo; Galindo; Geren; Goldman; Gonzales; Harless; Isaac; Kacal; Keough; King, P.; King, S.; Klick; Koop; Krause; Kuempel; Landgraf; Larson; Leach; Lozano; Metcalf; Meyer; Miller, D.; Miller, R.; Murphy; Murr; Nevárez; Otto; Paddie; Parker; Paul; Phelan; Price; Raney; Riddle; Rinaldi; Schaefer; Schofield; Schubert; Shaheen; Sheets; Sheffield; Simmons; Smith; Spitzer; Stephenson; Thompson, E.; Turner, E.S.; VanDeaver; Villalba; White, J.; White, M.; Workman; Wray; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Bernal; Blanco; Burrows; Canales; Capriglione; Collier; Cook; Cyrier; Davis, Y.; Deshotel; Dutton; Elkins; Farias; Farrar; Giddings; González; Guerra; Guillen; Gutierrez; Hernandez;

Herrero; Howard; Huberty; Hughes; Israel; Johnson; Keffer; King, K.; Longoria; Lucio; Márquez; Martínez; Martínez Fischer; Miles; Moody; Morrison; Muñoz; Naishtat; Oliveira; Peña; Phillips; Pickett; Raymond; Reynolds; Rodríguez, E.; Rodríguez, J.; Romero; Rose; Sanford; Simpson; Smithee; Springer; Stickland; Thompson, S.; Tinderholt; Turner, C.; Turner, S.; Vo; Walle; Wu; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman; Dukes; King, T.; Laubenberg; McClendon.

Absent — Hunter.

(Raney in the chair)

The chair stated that the motion to table Amendment No. 14 prevailed by the above vote.

### STATEMENT OF VOTE

When Record No. 90 was taken, I was temporarily out of the house chamber. I would have voted yes.

Hunter

### REMARKS ORDERED PRINTED

Representative Simpson moved to print remarks by Representative Dutton.

The motion prevailed.

(Speaker in the chair)

**CSHB 80**, as amended, was passed to engrossment by (Record 91): 102 Yeas, 40 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Ashby; Aycock; Bernal; Blanco; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Button; Canales; Clardy; Cook; Craddick; Crownover; Cyrier; Darby; Davis, Y.; Fallon; Farias; Farney; Farrar; Fletcher; Frullo; Galindo; Geren; Giddings; Goldman; Gonzales; González; Guerra; Gutierrez; Harless; Hernandez; Herrero; Howard; Huberty; Hunter; Isaac; Israel; Johnson; Kacal; King, K.; King, P.; King, S.; Koop; Kuempel; Landgraf; Larson; Longoria; Lozano; Lucio; Márquez; Martínez; Martínez Fischer; Meyer; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murr; Naishtat; Nevárez; Oliveira; Otto; Paddie; Parker; Phillips; Pickett; Price; Raney; Raymond; Reynolds; Riddle; Rodríguez, E.; Rodríguez, J.; Romero; Rose; Sanford; Schubert; Sheets; Sheffield; Simmons; Smith; Smithee; Stephenson; Thompson, E.; Thompson, S.; Turner, C.; Turner, S.; VanDeaver; Villalba; Vo; Walle; Workman; Wu; Zerwas.

Nays — Anderson, R.; Bell; Burns; Burrows; Capriglione; Collier; Dale; Davis, S.; Deshotel; Elkins; Faircloth; Flynn; Frank; Guillen; Hughes; Keffer; Keough; Klick; Krause; Leach; Metcalf; Miles; Murphy; Paul; Peña; Phelan; Rinaldi; Schaefer; Schofield; Shaheen; Simpson; Spitzer; Springer; Stickland; Tinderholt; Turner, E.S.; White, J.; White, M.; Wray; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman; Dukes; King, T.; Laubenberg; McClendon.

Absent — Dutton.

### STATEMENT OF VOTE

When Record No. 91 was taken, I was shown voting no. I intended to vote yes.

Collier

### REASON FOR VOTE

While I greatly respect the intention of the author in bringing this bill, I voted against **CSHB 80** because I believe it is an overly broad intrusion on Texans' liberties. While increasing the safety on our roads is a high priority for all Texans, it is the act of distracted driving that should be discouraged, not a particular activity. A driver whose texting is not causing distracted driving should not be considered to be committing a crime while the driver in the next car who is reading directions from a piece of paper and not looking at the road is not.

Moreover, I believe the bill likely will cause more, rather than less, unsafe driving. Texting has become such an omnipresent part of so many people's lives that I am concerned that if it becomes illegal to text while driving, many drivers will simply lower their phones further from eye level to avoid detection, taking their eyes even further from the road and increasing the likelihood of accidents.

Schofield

### HB 1 - COMMITTEE ON CALENDARS RULE ADOPTED

Pursuant to Rule 3, Section 4(2) and Rule 6, Section 16(f) of the House Rules, Representative Hunter moved to adopt the following rule governing floor consideration for **HB 1**:

Section 1. All original amendments that will be offered during second reading consideration of the bill must be filed with the chief clerk by 12 p.m. on Saturday, March 28.

Section 2. (a) During second and third reading consideration of the bill, any amendment that adds or increases an item of appropriation in the bill is not in order unless the amendment contains an equal or greater reduction in one or more items of appropriation in the bill from the fund or funds against which the appropriation is to be certified.

(b) Notwithstanding the provisions contained in Subsection (a), an amendment that reduces an item of appropriation from the list of dedicated accounts in general revenue identified in writing by the comptroller of public accounts as being excluded from certification, or is contingent on a comptroller of public accounts' certification or finding of fact, is not in order if the amendment also increases an item of appropriation based on the reduction.

(c) The provisions of this section do not apply to an amendment that makes an adjustment in an item of appropriations solely to correct a technical clerical error.

The Committee on Calendars rule was adopted by (Record 92): 137 Yeas, 6 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Ashby; Aycock; Bell; Bernal; Blanco; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Burns; Burrows; Button; Canales; Capriglione; Clardy; Collier; Cook; Craddick; Crownover; Cyrier; Dale; Darby; Davis, S.; Davis, Y.; Deshotel; Dutton; Elkins; Faircloth; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Galindo; Geren; Giddings; Goldman; Gonzales; González; Guerra; Guillen; Gutierrez; Harless; Hernandez; Herrero; Howard; Huberty; Hughes; Hunter; Isaac; Israel; Johnson; Kacal; Keffer; Keough; King, K.; King, P.; King, S.; Klick; Koop; Kuempel; Landgraf; Larson; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; Metcalf; Meyer; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Murr; Naishtat; Nevárez; Oliveira; Otto; Paddie; Parker; Paul; Peña; Phelan; Phillips; Pickett; Price; Raney; Raymond; Reynolds; Riddle; Rinaldi; Rodriguez, E.; Rodriguez, J.; Romero; Rose; Sanford; Schofield; Schubert; Shaheen; Sheets; Sheffield; Simmons; Smith; Smithee; Spitzer; Springer; Stephenson; Stickland; Thompson, E.; Thompson, S.; Tinderholt; Turner, C.; Turner, S.; VanDeaver; Villalba; Vo; Walle; White, J.; Workman; Wray; Wu; Zedler; Zerwas.

Nays — Krause; Leach; Schaefer; Simpson; Turner, E.S.; White, M.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman; Dukes; King, T.; Laubenberg; McClendon.

### STATEMENT OF VOTE

When Record No. 92 was taken, I was shown voting no. I intended to vote yes.

Leach

### HB 2 - COMMITTEE ON CALENDARS RULE ADOPTED

Pursuant to Rule 3, Section 5(2) and Rule 6, Section 16(f) of the House Rules, Representative Hunter moved to adopt the following rule governing floor consideration for **HB 2**:

Section 1. All original amendments that will be offered during second reading consideration of the bill must be filed with the chief clerk by 10 a.m. on Sunday, March 29.

Section 2. (a) During second and third reading consideration of the bill, any amendment that adds or increases an item of appropriation in the bill is not in order unless the amendment contains an equal or greater reduction in one or more items of appropriation in the bill from the fund or funds against which the appropriation is to be certified.

(b) Notwithstanding the provisions contained in Subsection (a), an amendment that reduces an item of appropriation from the list of dedicated accounts in general revenue identified in writing by the comptroller of public accounts as being excluded from certification, or is contingent on a comptroller of public accounts' certification or finding of fact, is not in order if the amendment also increases an item of appropriation based on the reduction.

(c) The provisions of this section do not apply to an amendment that makes an adjustment in an item of appropriations solely to correct a technical clerical error.

The Committee on Calendars rule was adopted by (Record 93): 141 Yeas, 2 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Ashby; Aycock; Bell; Bernal; Blanco; Bohac; Bonnen, D.; Bonnen, G.; Burkett; Burns; Burrows; Button; Canales; Capriglione; Clardy; Collier; Cook; Craddick; Crownover; Cyrier; Dale; Darby; Davis, S.; Davis, Y.; Deshotel; Dutton; Elkins; Faircloth; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Galindo; Geren; Giddings; Goldman; Gonzales; González; Guerra; Guillen; Gutierrez; Harless; Hernandez; Herrero; Howard; Huberty; Hughes; Hunter; Isaac; Israel; Johnson; Kacal; Keffer; Keough; King, K.; King, P.; King, S.; Klick; Koop; Krause; Kuempel; Landgraf; Larson; Leach; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; Metcalf; Meyer; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Murr; Naishtat; Nevárez; Oliveira; Otto; Paddie; Parker; Paul; Peña; Phelan; Phillips; Pickett; Price; Raney; Raymond; Reynolds; Riddle; Rinaldi; Rodriguez, E.; Rodriguez, J.; Romero; Rose; Sanford; Schaefer; Schofield; Schubert; Shaheen; Sheets; Sheffield; Simmons; Smith; Smithee; Spitzer; Springer; Stephenson; Thompson, E.; Thompson, S.; Tinderholt; Turner, C.; Turner, E.S.; Turner, S.; VanDeaver; Villalba; Vo; Walle; White, J.; White, M.; Workman; Wray; Wu; Zedler; Zerwas.

Nays — Simpson; Stickland.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Coleman; Dukes; King, T.; Laubenberg; McClendon.

(Márquez in the chair)

### **COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Ways and Means meeting is canceled.

### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 6).

**PROVIDING FOR ADJOURNMENT**

At 5:16 p.m., Representative Nevárez moved that, at the conclusion of the reading of bills and resolutions on first reading and referral to committees, the house adjourn until 10 a.m. tomorrow in memory of Albert V. Hallford of Fredericksburg.

The motion prevailed.

**BILLS AND JOINT RESOLUTIONS ON FIRST READING  
AND REFERRAL TO COMMITTEES  
RESOLUTIONS REFERRED TO COMMITTEES  
CORRECTIONS IN REFERRAL**

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. Resolutions were at this time laid before the house and referred to committees. Pursuant to Rule 1, Section 4 of the House Rules, the chair at this time corrected the referral of measures to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

(C. Turner in the chair)

**ADJOURNMENT**

In accordance with a previous motion, the house, at 5:19 p.m., adjourned until 10 a.m. tomorrow.

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**ADDENDUM**

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**REFERRED TO COMMITTEES**

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

**List No. 1**

**HB 3152** (By Smith), Relating to the administration of the Port of Houston Authority.

To Special Purpose Districts.

**HB 3915** (By Wray), Relating to the assessment of damages in condemnation proceedings regarding high speed rail companies.

To Land and Resource Management.

**HB 3918** (By Wray), Relating to private activity bonds.

To Investments and Financial Institutions.

**HB 4004** (By Schaefer), Relating to certain holders of independent mobility vehicle dealer's licenses.

To Transportation.

**HB 4070** (By Shaheen), Relating to the adoption or enforcement of laws relating to labor by a political subdivision.

To Urban Affairs.

**HR 829** (By J. White), Congratulating Savion Wright of Jasper on his selection as a Top 24 finalist on American Idol.

To Rules and Resolutions.

Pursuant to Rule 1, Section 4 of the House Rules, the chair corrects the referral of the following bills and resolutions:

**HB 1881** (By Capriglione and Parker), Relating to authorizing certain private schools to charge fees for processing or handling certain payments or payment transactions.

To Investments and Financial Institutions.

**HB 3724** (By Herrero), Relating to the consideration of certain scientific evidence constituting the basis for an application for a writ of habeas corpus.

To Criminal Jurisprudence.

#### **MESSAGES FROM THE SENATE**

The following messages from the senate were today received by the house:

#### **Message No. 1**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Wednesday, March 25, 2015 - 1

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SB 172** Huffman

Relating to the addition of certain substances to Penalty Groups 1-A and 2 of the Texas Controlled Substances Act for criminal prosecution and other purposes.

**SB 173** Huffman

Relating to the designation for criminal prosecution and other purposes of certain chemicals commonly referred to as synthetic cannabinoids as controlled substances and controlled substance analogues under the Texas Controlled Substances Act.

**SB 179** Perry

Relating to the handgun proficiency required to obtain or renew a concealed handgun license.

**SB 453** Seliger

Relating to minimum scores required for public school students to receive credit by an examination administered through the College-Level Examination Program.

**SB 461** Perry

Relating to false or misleading packaging, labeling, or advertising of certain abusable synthetic substances; providing civil penalties; creating a criminal offense.

**SB 512** Zaffirini

Relating to the promulgation of certain forms for use in probate matters.

**SB 534** Watson

Relating to the oath of a person admitted to practice law in the State of Texas.

**SB 562** Nichols

Relating to annual permits to move certain equipment; authorizing a fee.

**SB 664** Taylor, Van

Relating to employment termination for falsification of military record in obtaining employment or employment benefits.

**SB 671** Birdwell

Relating to the designation of Loop 567 in Granbury as the Deputy Sergeant Lance McLean Memorial Highway.

**SB 757** Perry

Relating to the repeal of the production taxes on crude petroleum and sulphur.

**SCR 5** Estes

Urging Congress to reimburse the State of Texas for bearing the financial burden of the federal government's responsibility to secure the Texas-Mexico international border.

Respectfully,

Patsy Spaw

Secretary of the Senate

**Message No. 2**

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Wednesday, March 25, 2015 - 2

The Honorable Speaker of the House

House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SB 308** Whitmire

Relating to the powers and duties of campus police departments at private institutions of higher education.

**SB 652** Schwertner

Relating to excluding a franchisor as an employer of a franchisee or a franchisee's employees.

**SB 695** Taylor, Larry

Relating to a study of the feasibility and desirability of creating and maintaining a coastal barrier system.

**SB 1024** Seliger

Relating to eligibility for course credit and high school diplomas of students enrolled in educational programs provided by the Windham School District in the Texas Department of Criminal Justice.

Respectfully,

Patsy Spaw

Secretary of the Senate

**Message No. 3**

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Wednesday, March 25, 2015 - 3

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SB 114** Taylor, Van

Relating to the applicability of adverse licensing, listing, or registration decisions by certain health and human services agencies.

**SB 147** Rodríguez

Relating to the violation of certain court orders or conditions of bond in a family violence, sexual assault or abuse, stalking, or trafficking case; providing penalties.

**SB 536** Whitmire

Relating to the designation of certain prostitution prevention programs as commercially sexually exploited persons court programs.

**SB 630** Rodríguez

Relating to protective orders for certain victims of sexual assault or abuse, stalking, or trafficking.

Respectfully,

Patsy Spaw

Secretary of the Senate

**Message No. 4**

## MESSAGE FROM THE SENATE

## SENATE CHAMBER

Austin, Texas

Wednesday, March 25, 2015 - 4

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

## THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SB 1** Nelson

Relating to certain restrictions on the imposition of ad valorem taxes and to the duty of the state to reimburse certain political subdivisions for certain revenue loss.

**SB 31** Zaffirini

Relating to the authority of certain volunteer firefighter and emergency services organizations to hold tax-free sales or auctions.

**SB 752** Bettencourt

Relating to the repeal of the inheritance tax and the tax on combative sports events.

**SB 833** Campbell

Relating to the continuation of a residence homestead exemption from ad valorem taxation while the owner is temporarily absent because of military service.

Respectfully,

Patsy Spaw

Secretary of the Senate

**Message No. 5**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Wednesday, March 25, 2015 - 5

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SCR 35** Whitmire

Granting the legislature permission to adjourn for more than three days during the period beginning on Wednesday, March 25, 2015, and ending on Monday, March 30, 2015.

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 6**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Wednesday, March 25, 2015 - 6

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SB 8** Schwertner

Relating to the total revenue exemption for the franchise tax.

**SB 947** Zaffirini

Relating to a study and report by the Texas Higher Education Coordinating Board on the feasibility of providing off-campus employment positions through the Texas college work-study program.

Respectfully,  
Patsy Spaw  
Secretary of the Senate

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**APPENDIX**

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**STANDING COMMITTEE REPORTS**

Favorable reports have been filed by committees as follows:

**March 24**

Appropriations - **HB 1, HB 2, HB 5, HB 8, HJR 8**

Criminal Jurisprudence - **HB 1286, HB 1447**

Economic and Small Business Development - **SB 293**

Human Services - **SB 219**

State Affairs - **HB 63, HB 177**

**ENROLLED**

**March 24 - HCR 100**

**SENT TO THE GOVERNOR**

**March 24 - HCR 47, HCR 100**

**SIGNED BY THE GOVERNOR**

**March 24 - HCR 33**