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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. O'Brien and Kunze

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REVISED VERSION\*

### SUMMARY

#### Using electronic devices while driving

- Broadens the existing texting-while-driving prohibition to more generally prohibit using an electronic wireless communications device (EWCD) while driving.
- Modifies certain current exemptions and creates additional exemptions to the new EWCD-while-driving prohibition.
- Changes the existing minor misdemeanor penalty for texting-while-driving to an unclassified misdemeanor for the new EWCD-while-driving prohibition with a \$150 fine, and establishes increasing tiered penalties for additional violations within a three-year period.
- Makes the EWCD-while-driving prohibition a primary offense (rather than a secondary offense, as in current law).

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\* The revised version of the analysis (1) clarifies the provision of the analysis regarding distracted driving while violating the new EWCD-while-driving prohibition, and (2) alters the portion of the analysis that addresses the imposition of points on a person's driver's license for certain moving violations when the person was distracted.

## Distracted driving

- Aligns the scope of the distracted driving law with the new EWCD-while-driving prohibition so that violating EWCD-while-driving constitutes distracted driving (driving distracted while committing a moving violation may result in an additional \$100 fine).
- Adds (1) failure to control and (2) passing a stopped school bus to the list of moving violations to which an additional distracted driving penalty applies.

## Vehicular homicide, assault, and harm

- Creates a new aggravated vehicular homicide offense: prohibits a person from causing the death of another as the proximate result of an EWCD-while-driving offense or a distracted driving offense; imposes a **second degree felony** and a Class 1 driver's license suspension (life).
- Creates a new aggravated vehicular assault offense: prohibits a person from causing serious physical harm to another as the proximate result of an EWCD-while-driving offense or a distracted driving offense; imposes a **third degree felony** and a Class 3 driver's license suspension (2-10 years).
- Increases the penalty for the two new offenses if certain penalty enhancements apply.
- Creates a new vehicular harm offense: prohibits a person from causing physical harm – which is harm that is not serious physical harm – to another as the proximate result of an EWCD-while-driving offense or a distracted driving offense; imposes a **first degree misdemeanor**, a Class 5 license suspension (6 months-3 years), and a \$500-\$1,000 fine.

## Other provisions

- Imposes additional points on a person's driver's license when a court determines that the person has committed certain speeding offenses while distracted.
- Requires driver's education instruction to include education on the dangers of driving a vehicle while distracted generally (the current required curriculum addresses only texting-while-driving).
- Requires the Department of Transportation to erect signs regarding the EWCD-while-driving prohibition where an interstate or United States route enters Ohio and where a road, originating from a commercial service airport, exits the airport's property.
- Makes corrective changes in the EWCD-while-driving and distracted driving laws.

## Enforcement

- Delays the effective date of all of the bill’s provisions – EWCD-while-driving, distracted driving, aggravated vehicular homicide, vehicular assault, vehicular harm, the imposition of points on a person’s driver’s license, driver’s education, signage, and corrective changes – by **six months** after the date the bill would otherwise become effective (which is 90 days after enactment).
- Regarding the EWCD-while-driving prohibition specifically, during the six-month interim period, authorizes a law enforcement officer to stop a driver and issue a warning that includes information about the prohibition.
- Continues enforcement of the existing texting-while-driving prohibition during the six-month interim period.

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## DETAILED ANALYSIS

### Using an electronic wireless communications device while driving

The bill expands the current texting-while-driving prohibition to generally prohibit any use of an electronic wireless communications device while driving. To accomplish this, the bill alters the relevant definitions, the language of the prohibition, and

the related exemptions and penalties. Additionally, the bill removes the word “handheld” from the phrase “handheld electronic wireless communications device” throughout the statute – as a result, the bill prohibits the use of **all** electronic wireless communications devices (EWCD) generally while driving, not **handheld** EWCDs only, as in current law.<sup>1</sup>

## Definitions

The bill alters the definitions of “electronic wireless communications device” and “voice-operated and hands-free”; the changes are provided in the table below.

Topic	Current law	Under the bill
Electronic wireless communications device	<ul style="list-style-type: none"> <li>▪ A wireless telephone;</li> <li>▪ A text-messaging device;</li> <li>▪ A personal digital assistant;</li> <li>▪ A computer, including a laptop computer and a computer tablet; or</li> <li>▪ Any other substantially similar wireless device that is designed or used to communicate text <i>(R.C. 4511.204(G))</i>.</li> </ul>	Same, but also includes any device capable of displaying a video, movie, broadcast television image, or visual image, and any other device that is designed or used to initiate or receive communication, or exchange information or data <i>(R.C. 4511.204(A))</i> .
Voice-operated or hands-free device	A device that allows the user to vocally compose or send, or listen to a text-based communication without the use of either hand except to activate or deactivate a feature or function <i>(R.C. 4511.204(G))</i> .	A feature or function that allows a person to use an EWCD without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe (term is referred to as a “voice-operated or hands-free feature or function”) <i>(R.C. 4511.204(A))</i> .

## Prohibition

As indicated above, the bill expands the current prohibition against texting while driving. Currently, no person may drive a motor vehicle on any street open to the public for vehicular traffic **while using a handheld EWCD to write, send, or read a**

<sup>1</sup> R.C. 4511.204.

**text-based communication.** The bill instead prohibits a person from operating a motor vehicle on any street open to the public for vehicular traffic while doing any of the following:

1. Using any part of the person’s body to operate, hold, or support an EWCD to do any of the following:
  - a. Write, send, or read any communication, including a text message, email, social media interaction, or instant message;
  - b. Engage in any form of electronic data retrieval or electronic data communication;
  - c. Manually enter letters, numbers, or symbols into any website, search engine, or application, including a calendar or navigation service site;
  - d. Make any communication, including a phone call, video conference, voice message, or one-way voice communication.
2. Using an EWCD to do any of the following:
  - a. View a video, movie, broadcast television image, or visual image;
  - b. Record, post, send, or broadcast a video or image.<sup>2</sup>

### Exemptions

For purposes of the new EWCD-while-driving prohibition, the bill alters the exemptions that currently apply to the texting-while-driving prohibition, as explained below.

Topic	Current law	Under the bill
Navigation	A person using a device for navigation purposes ( <i>R.C. 4511.204(B)(7)</i> ).	A person using an EWCD in conjunction with a voice-operated or hands-free device feature or function of the vehicle for purposes of navigation, watching data related to navigation, or watching a static background image that supports a mapping service or similar application, provided that both of the following apply: <ul style="list-style-type: none"> <li>▪ The person does not manually enter letters, numbers, or symbols into the device during the use; and</li> </ul>

<sup>2</sup> R.C. 4511.204(B).

Topic	Current law	Under the bill
		<ul style="list-style-type: none"> <li>▪ The person is not holding or supporting the device with any part of the person's body (<i>R.C. 4511.204(C)(6)</i>).</li> </ul>
Voice-operated or hands-free	A person using a handheld EWCD in conjunction with a voice-operated or hands-free device feature or function of the vehicle ( <i>R.C. 4511.204(B)(10)</i> ).	<p>A person using an EWCD in conjunction with a voice-operated or hands-free feature or function of the vehicle to make or receive a communication or use an application, provided that both of the following apply:</p> <ul style="list-style-type: none"> <li>▪ The person does not manually enter letters, numbers, or symbols into the device during the use; and</li> <li>▪ The person is not holding or supporting the device with any part of the person's body (<i>R.C. 4511.204(C)(8)</i>).</li> </ul>
Permanently installed component	A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle ( <i>R.C. 4511.204(B)(5)</i> ).	A person using a component that is permanently installed in the motor vehicle, regardless of whether the component was factory-installed or installed after manufacture ( <i>R.C. 4511.204(C)(7)</i> ).
Speaker phone	No provision.	A person using the speaker phone function of the EWCD, provided that the person is not holding or supporting the device with any part of the person's body ( <i>R.C. 4511.204(C)(9)</i> ).
A single touch or swipe	A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device ( <i>R.C. 4511.204(B)(8)</i> ).	<p>A person using a feature or function of the EWCD with a single touch or single swipe, provided that both of the following apply:</p> <ul style="list-style-type: none"> <li>▪ The person does not manually enter letters, numbers, or symbols into the device during the use;</li> <li>▪ The person is not holding or supporting the device with any part of the person's body (<i>R.C. 4511.204(C)(10)</i>).</li> </ul>
Emergency purposes	A person using a handheld EWCD in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital	A person using an EWCD to make contact, for emergency purposes, with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity ( <i>R.C. 4511.204(C)(1)</i> ).

Topic	Current law	Under the bill
	or health care provider, fire department, or other similar emergency agency or entity <i>(R.C. 4511.204(B)(1)).</i>	
Operator of a public safety vehicle	A person driving a public safety vehicle who uses a handheld EWCD in that manner in the course of the person's duties <i>(R.C. 4511.204(B)(2)).</i>	A person operating a public safety vehicle while using an EWCD in the course of the person's official duties <i>(R.C. 4511.204(C)(3)).</i>
Stationary position outside a lane of travel	A person using a handheld EWCD in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel <i>(R.C. 4511.204(B)(3)).</i>	A person using an EWCD whose motor vehicle is in a stationary position outside a lane of travel <i>(R.C. 4511.204(B)(3)).</i>
Holding a phone to make or receive a phone call	A person reading, selecting, or entering a name or telephone number in a handheld EWCD for the purpose of making or receiving a telephone call <i>(R.C. 4511.204(B)(4)).</i>	No provision.
Radio waves	A person receiving wireless messages via radio waves <i>(R.C. 4511.204(B)(6)).</i>	No provision.
Commercial truck	A person operating a commercial truck while using a mobile data terminal that transmits and receives data <i>(R.C. 4511.204(B)(9)).</i>	Same <i>(R.C. 4511.204(C)(5)).</i>
Utility vehicles	No provision.	A person operating a utility service vehicle or a vehicle for or on behalf of a utility, if the person is acting in response to an emergency, power outage, or circumstance that affects the health or safety of individuals <i>(R.C. 4511.204(C)(4)).</i>

## Penalties

The bill applies different penalties to the new EWCD-while-driving prohibition. Under current law, texting while driving is a minor misdemeanor, punishable by a fine of up to \$150.<sup>3</sup> The bill changes the penalty to an unclassified misdemeanor with a \$150 fine and establishes the following tiered penalties:

- If, within three years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of the prohibition or a substantially equivalent municipal ordinance, the fine is at least \$250.
- If, within three years of the violation, the offender has been convicted of or pleaded guilty to two or more prior violations of the prohibition or a substantially equivalent municipal ordinance, the fine is at least \$500; and the court may impose a Class 7 suspension of the person's driver's license (not more than one year).

A court may impose any other penalties for a misdemeanor, but may not impose a jail term, community residential sanction, or any other fines or suspensions.<sup>4</sup>

The bill also makes the new prohibition a primary offense. A primary offense means that a law enforcement officer may issue a ticket for the offense solely for a violation of the offense. When an offense is secondary, the law enforcement officer may only pull over a driver if the driver commits another primary offense. Thus, under the bill, a law enforcement officer may stop a motorist solely for violating the new EWCD prohibition.<sup>5</sup>

## Distracted driving

The bill changes what constitutes "distracted" in the distracted driving law and adds two offenses to the list of specified offenses to which an additional distracted driving penalty applies. Currently, if a person commits a moving violation (for example, speeding) while distracted, the person is subject to a \$100 fine in addition to the fine for the underlying violation.<sup>6</sup> The term "distracted" is defined in two parts:

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<sup>3</sup> R.C. 4511.204(E); R.C. 2929.28, not in the bill.

<sup>4</sup> R.C. 4511.204(E).

<sup>5</sup> R.C. 4511.043 and 4511.204(C).

<sup>6</sup> If a person successfully completes a distracted driving safety course established by the Department of Public Safety and submits proof of successful completion to the court, the person is not required to pay the \$100 additional fine. R.C. 4511.991(B)(1).



1. Using an electronic wireless communications device, as defined in the texting-while-driving law, while driving (with certain exceptions); and
2. Engaging in any activity that is not necessary to the operation of a vehicle and impairs, or reasonably would be expected to impair, the operator's ability to safely drive.

The bill alters (1) to specify that using an EWCD in violation of the bill constitutes distracted driving. The bill retains (2). Otherwise put, the bill aligns the scope of (1) with the new EWCD-while-driving prohibition. As a result, a person who violates the new EWCD-while-driving prohibition and commits a specified moving violation has committed distracted driving and would be penalized for the moving violation, using an EWCD while driving, and be subject to the \$100 fine for driving distracted.<sup>7</sup>

Next, the bill adds two offenses to the list of underlying moving violations to which the additional distracted driving penalty applies: (1) failure to control and (2) passing a stopped school bus (that is loading or unloading passengers).<sup>8</sup>

## **Offenses related to distracted driving and use of an EWCD**

The bill establishes three new criminal prohibitions related to distracted driving and using an EWCD-while-driving. First, the bill establishes a new aggravated vehicular homicide offense and vehicular assault offense, which apply when a person causes the death of or serious physical harm to a person while driving when distracted or while unlawfully using an EWCD. Second, the bill creates the offense of vehicular harm, which applies when a person causes harm (other than serious physical harm) to a person or serious physical harm to property while driving when distracted or while unlawfully using an EWCD.

### **Aggravated vehicular homicide**

The bill creates a new aggravated vehicular homicide offense: it prohibits a person from causing the death of another (or another's unborn) as the proximate result of violating either the EWCD-while-driving prohibition or the distracted driving law. The bill applies the current OVI-related (operating a vehicle while impaired) aggravated vehicular homicide penalties to a person who is convicted of or pleads guilty to this offense: a **second degree felony** and a **Class 1 driver's license suspension** (life).

Although there are several circumstances under current law that, if applicable, would enhance the penalty imposed for an OVI-related vehicular homicide, only the following non-OVI-related circumstances apply to enhance the penalty for the new offense to a **first degree felony**:

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<sup>7</sup> R.C. 4511.991(A).

<sup>8</sup> R.C. 4511.202, 4511.75, and 4511.991(B).

- The offender was driving under a suspension or cancellation;
- The offender did not have a valid driver's license and was not eligible for renewal without examination;  
The offender was previously convicted of or pleaded guilty to a vehicular homicide offense; or
- The offender was previously convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.<sup>9</sup>

### **Vehicular assault**

The bill creates a new aggravated vehicular assault offense: it prohibits a person from causing serious physical harm to another (or another's unborn) as the proximate result of violating either the EWCD-while-driving prohibition or the distracted driving law. Serious physical harm means, among other things, physical harm that carries a substantial risk of death.<sup>10</sup> The bill applies the current OVI-related aggravated vehicular assault penalties to a person who is convicted of or pleads guilty to this offense: a **third degree felony** and a **Class 3 driver's license suspension** (2 to 10 years).

Although there are several circumstances under current law that, if applicable, would enhance the penalty imposed for an OVI-related vehicular assault, only the following non-OVI-related circumstances apply to enhance the penalty for the new offense to a **second degree felony** and either a **Class 2** (3 years to life) or **Class 1 driver's license suspension** (life):

- The offender was driving under a suspension;
- The offender was previously convicted of or pleaded guilty to a vehicular assault offense;
- The offender was previously convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.<sup>11</sup>

### **Vehicular harm**

The bill creates the offense of vehicular harm, which prohibits causing either of the following as the proximate result of violating either the EWCD-while-driving prohibition or the distracted driving law:

Physical harm (which is any injury that is not serious physical harm) to another or another's unborn;

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<sup>9</sup> R.C. 2903.06(A)(1)(d) and (e) and (B)(2)(b).

<sup>10</sup> R.C. 2901.01(A)(5), not in the bill.

<sup>11</sup> R.C. 2903.08(A)(1)(d) and (e) and (B)(1)(a).

- Serious physical harm to property (any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment).<sup>12</sup>

If a person is convicted of or pleads guilty to this offense, the bill imposes a **first degree misdemeanor**, a **Class 5 driver's license suspension** (6 months to 3 years), and a **\$500 to \$1,000 fine**.<sup>13</sup>

### Points imposed on a driver's license

The bill imposes two additional points upon a person's driver's license when a court determines that the person has committed certain offenses while distracted, as illustrated in the table below.

Points imposed when driving distracted <sup>14</sup>		
Offense	Current law	Additional points imposed under S.B. 134
When a person exceeds the lawful limit by 30 m.p.h.	4 points	6 points
When the speed exceeds the lawful speed limit of 55 m.p.h. by more than 10 m.p.h.	2 points	4 points
When the speed exceeds the lawful speed limit of less than 55 m.p.h. by more than 5 m.p.h.	2 points	4 points
When the speed does not exceed the above-mentioned amounts	0 points	2 points
All other moving violations	2 points	4 points

<sup>12</sup> R.C. 2901.01(A)(3) and (4), not in the bill.

<sup>13</sup> R.C. 2903.07.

<sup>14</sup> R.C. 4510.036(C)(12), (13), (17), and (18).

The bill also imposes additional points upon a person's driver's license when a court determines that the person committed a violation of the EWCD-while-driving prohibition:

- A first offense in any three-year period: 2 points;
- A second offense in any three-year period: 3 points;
- A third or subsequent offense in any three-year period: 4 points.<sup>15</sup>

## Other provisions

The bill requires the Director of Public Safety to expand driver's education regarding distracted driving. Currently, the Director must adopt rules that require driver's education to include instruction on the dangers of driving a motor vehicle while using an EWCD to write, send, or read a text. The bill broadens this to require the driver's education instruction to include education on the dangers of driving a vehicle while distracted generally, including using an EWCD and engaging in any other activity that distracts a driver from the safe and effective operation of a motor vehicle.<sup>16</sup>

The bill also requires the Department of Transportation to erect signs regarding the new EWCD-while-driving prohibition in the following locations:

- Where an interstate or United States route enters Ohio; and
- Where a road, originating from a commercial service airport, exits the airport's property.<sup>17</sup>

Last, the bill amends the portion of the EWCD-while-driving statute that addresses allied offenses of similar conduct. Current law provides that the prosecution of the state texting-while-driving offense does not preclude a separate prosecution for a violation of a substantially equivalent municipal ordinance for the same conduct, but it states that the offenses are allied offenses of similar import. When an offender's conduct can be construed to constitute two or more allied offenses of similar import, the offender may be **charged** with **all** of the offenses, but prior to the conviction stage, the offenses merge and the offender may be **convicted** of **only**

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<sup>15</sup> R.C. 4510.036(C)(14).

<sup>16</sup> R.C. 4508.02.

<sup>17</sup> R.C. 4511.122.

**one.** But, current law implies that a person may be convicted of both offenses – as such, the bill clarifies that there may only be one conviction.<sup>18</sup>

## Enforcement

The bill delays the effective date of its new provisions for six months after the bill would otherwise become effective (which is 90 days after enactment). Otherwise put, enforcement of all the bill’s provisions – use of an EWCD-while-driving, distracted driving, aggravated vehicular homicide, vehicular assault, vehicular harm, the imposition of points on a person’s driver’s license, driver’s education, signage, and corrective changes – is delayed six months.

As for the EWCD-while-driving prohibition specifically, during the interim six-month period, a law enforcement officer may stop a driver – but not issue a ticket, citation, or summons – for an action that would violate the new prohibition, if that provision were in effect. Instead, the officer may issue the person a written warning explaining the new prohibition. The written warning may notify the person of the specific date when law enforcement officers are authorized to begin issuing tickets, citations, and summons for violations of the new expanded prohibition.

But, during the interim period, a law enforcement officer may still issue a ticket, citation, or summons for a texting-while-driving violation as it exists currently.<sup>19</sup>

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## HISTORY

Action	Date
Introduced	02-18-20

S0285-I-REVISED-133/ar

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<sup>18</sup> R.C. 4511.204(F).

<sup>19</sup> Sections 3 and 4.