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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 283
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsors: Reps. Abrams and Lampton

Local Impact Statement Procedure Required: Yes

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Highlights

- There may be a minimal annual gain in fine revenue collected from drivers cited for using an electronic wireless communications device while driving by the Ohio State Highway Patrol and credited to the state's existing Security, Investigations, and Policing Fund (Fund 8400).
- Law enforcement agencies, including the Ohio State Highway Patrol, may incur additional costs if the officer or trooper who issued a citation has to appear in court for a traffic violation charge that otherwise might not have been issued or contested under existing law.
- The state may gain a minimal amount of court cost revenue annually to be apportioned between certain state funds.¹
- There may be a minimal annual gain in fine, fee, and court cost revenue from traffic citations distributed pursuant to state law between counties, municipalities, and townships.
- State and local law enforcement agencies will likely have to expend additional time and effort, thus incurring additional costs, to comply with the bill's reporting requirements. This is particularly true for those law enforcement agencies that do not have the capability

¹ The state funds include the Indigent Defense Support Fund (Fund 5DY0), the Victims of Crime/Reparations Fund (Fund 4020), the Drug Law Enforcement Fund (Fund 5ET0), and the Justice Program Services Fund (Fund 4P60).

to compile the required information electronically and will instead be required to hand tabulate all citations written in the previous two-month period.

- The Ohio Department of Transportation will incur costs to design and erect signs regarding the EWCD-while-driving prohibition at certain specified locations. The one-time costs will be up to around \$100,000, and to be paid from the Highway Operating Fund (Fund 7002).

Detailed Analysis

The bill modifies the law governing texting while driving by expanding the prohibition to a general prohibition against using an electronic wireless communications device (EWCD) while driving. This means that a person generally cannot use, hold, or physically support with any part of the person's body, as opposed to only handheld under existing law, any EWCD while operating a motor vehicle on any street, highway, or public property.² Under the bill, a law enforcement officer must visibly observe the offense in order to have probable cause to stop the vehicle and enforce the bill's prohibition against use of an EWCD while driving.

The bill also:

- Specifies that operating a motor vehicle, trackless trolley, or streetcar while using, holding, or supporting an electronic wireless communications device is a strict liability offense (similar to most other traffic offenses);³
- Makes the use of an EWCD while driving a primary traffic offense for all drivers instead of only those drivers who are under 18 years of age, as under existing law;
- Creates reporting requirements for law enforcement officers relating to use of an EWCD-while-driving violations;
- Waives, for a first-time offender within a two year period, the two points that would otherwise be assessed against the offenders driver's license for use of an EWCD while driving if the offender attends and successfully completes the existing distracted driving safety course;
- Requires the Ohio Department of Transportation to erect related highway warning signs; and
- Specifies a six-month warning period before authorizing full enforcement.

² The bill's exemptions from the EWCD while driving law include: (1) use of a two-way radio transmitter or receiver by a person licensed by the FCC to participate in the Amateur Radio Service, (2) storing an EWCD in a holster, harness, or article of clothing on the person's body, (3) use of an EWCD while in a stationary position at a red light or parked on a road or highway due to an emergency or road closure, and (4) use of an EWCD by a person who is holding the EWCD directly near the person's ear for purposes of conducting a phone call.

³ Strict liability exists when a defendant is liable for committing an action, regardless of what that person's intent or mental state was when committing the action.

Citation activity

Under existing law, use of a handheld EWCD while driving is considered a secondary offense. This means that a law enforcement officer generally cannot issue a ticket, citation, or summons for use of an EWCD while driving unless the officer also arrests the driver or issues a ticket, citation, or summons for an offense other than a secondary offense. By making the bill's broader offense of using an EWCD while driving a primary traffic offense, the state, and those political subdivisions that have not already enacted stricter local ordinances, may experience an increase in the number of citations issued for such behavior. The magnitude of any increase in citation activity would depend upon how aggressively the state and each political subdivision enforces the bill's prohibition, including their willingness to allocate resources to handle contested violations.

LBO is aware that some cities and villages have utilized their constitutional home rule authority to enact local ordinances making distracted driving a primary offense. As such, the bill will have no impact on those municipalities. While no comprehensive list of those municipalities exists, LBO's research suggests that at least 39 municipalities (listed in the table below) may already be enforcing distracted driving, including the use of an EWCD while driving, as a primary offense.

Table 1. Enforcement of Distracted Driving as a Primary Offense

Known Municipalities with Local Ordinances

Avon	Cincinnati	Hilliard	New Albany	University Heights
Bay Village	Cleveland	Huron	North Olmstead	Upper Arlington
Beachwood	Cleveland Heights	Kettering	North Royalton	Walton Hills
Belpre	Columbus	Lakewood	Pepper Pike	Wauseon
Bexley	Delaware	Lyndhurst	Portsmouth	Westerville
Brooklyn	Dublin	Mantua	Shaker Heights	Woodmere
Brook Park	Fairview Park	Marietta	South Euclid	Worthington
Canal Winchester	Granville	Moreland Hills	Toledo	

Note: Additional cities and villages may be enforcing distracted driving as a primary offense than those that are included in this table.

Violation revenues

Under existing law, the use of an electronic wireless communications device while driving is a minor misdemeanor, subject to a fine of up to \$150. In the case of a minor misdemeanor, a law enforcement officer generally does not arrest a person, but instead issues a citation. In lieu of making a court appearance, that person either in person, by mail, or online where available,

can waive their right to contest the offense before the court or jury, and pay the total amount of fines, fees, and court costs to the clerk of the court.

The bill makes the offense an unclassified misdemeanor, generally retaining the existing fine of not more than \$150; however, the bill adds two points to the driver's license for a conviction. The bill has tiered penalties (see table below) where both the fine assessed and the number of points added to the driver's license increase with the number of prior convictions in the preceding two-year period. If an offender has had three or more convictions within that period, they may also be subject to a 90-day license suspension. The bill also increases the fine to two times the amount imposed for the violation if the offense occurred in a construction zone. Under the bill, an offender may elect to attend the existing Department of Public Safety Distracted Driving Safety Course in lieu of payment of the \$150 fine for a first offense and prohibits a jail term or residential community sanction.

Because of increased citations issued under the bill and the potential for an increased fine, there will be a corresponding gain in the amount of fine, fee, and court cost revenue collected and distributed pursuant to state law between the state, counties, municipalities, and townships. The magnitude of any increase in fine, fee, and court cost revenue annually will depend upon how aggressively the state and each political subdivision enforces the bill's prohibition. The fine, fees, and court costs for using an EWCD while driving are summarized in the table below.

Table 2. H.B. 283 Fine, Fees, and Costs: Use of an Electronic Wireless Communications Device While Driving

Financial Penalty Component	Amount Paid by Violator	Recipient of Amount
Fine	R.C. violation <ul style="list-style-type: none"> ▪ Up to \$150 (<i>1st offense</i>) ▪ Up to \$250 (<i>2nd offense</i>) ▪ Up to \$500 (<i>subsequent offense</i>) 	If citation is issued by: <ul style="list-style-type: none"> ▪ Sheriff or municipal law enforcement agency – retained by county ▪ Township – retains 50%, remainder to county (if accompanied by speeding violation, that portion of the fine is retained solely by the county) ▪ Ohio State Highway Patrol – credited to state's Security, Investigations, and Policing Fund (Fund 8400)
	Local ordinance violations Fine varies by local jurisdiction	Retained by the municipality
Local court costs and fees	Varies by local jurisdiction	Generally retained by the county or municipality with subject matter jurisdiction over traffic violations
State court costs*	\$37.50	Deposited in state treasury as follows: <ul style="list-style-type: none"> ▪ \$25 to the Indigent Defense Support Fund (Fund 5DY0)

Table 2. H.B. 283 Fine, Fees, and Costs: Use of an Electronic Wireless Communications Device While Driving

Financial Penalty Component	Amount Paid by Violator	Recipient of Amount
		<ul style="list-style-type: none"> ▪ \$9 to the Victims of Crime/Reparations Fund (Fund 4020) ▪ \$3.40 to the Drug Law Enforcement Fund (Fund 5ET0) ▪ 10¢ to the Justice Program Services Fund (Fund 4P60)

*An additional \$1.50 is sent to the county or municipal indigent drivers alcohol treatment fund under the control of the court.

Reporting requirements

The bill creates reporting requirements for state and local law enforcement agencies related to the issuance of EWCD-while-driving citations. Specifically, a law enforcement officer must report the issuance of the ticket, citation, or summons to the officer's law enforcement agency, and ensure that the report indicates the offender's race. Every other month, the agency must collect all of the reports from its officers for the prior two months and submit the data to the Office of the Attorney General.

The impact on law enforcement will vary by agency depending on whether the bill's required information is already being collected by the agency and whether or not the agency has the ability to compile that information electronically. The Model Uniform Traffic Ticket (MUTT) is used by all law enforcement agencies throughout the state. The MUTT currently includes a "race" data field. As such, it does not appear that new data collection methods will need to be created. A number of agencies, including the Ohio State Highway Patrol, currently use an electronic citation writing method, or e-Citation, whereby the citation is generated electronically in the patrol car, printed using a mobile printer, and then issued to the violator. Data from the traffic stop is stored on a central computer. LBO is aware of at least 139 local agencies that currently utilize the e-Citation software made available by the Patrol. An unknown number of additional agencies may also be using proprietary e-Citation software. With more than 900 law enforcement agencies in operation throughout the state though, the majority are still using hand-written, paper traffic citations.

Local law enforcement agencies

Under the bill, local law enforcement agencies will need to develop their own way of compiling EWCD-while-driving and related race statistics, as well as transmit or send the data to the Office of the Attorney General. While the impact on a given agency is likely to vary, in some cases the additional time, effort, and costs involved to comply with the reporting requirements may be significant, meaning they may exceed \$5,000 for any given political subdivision, or \$100,000 statewide. This is due to the extra time and effort that will be required to compile the necessary information and submit it to the Attorney General, especially if an agency does not have an electronic records management system.

For agencies utilizing e-Citation, compiling the necessary reporting information should only minimally increase administrative costs. For agencies that still hand write citations, compiling the necessary statistics will be a manual process and could be significant in both time and effort. The impact on these agencies will be greater than the impact on their counterparts

with electronic records management systems. Some agencies may choose to compile the reports using simple databases or spreadsheets, while others may opt to create a specialized tracking system, or convert to e-Citation.

The bill is silent as to how these data reports are to be sent to the Attorney General. However, if standard email were sufficient, costs to transmit would likely be negligible.

Ohio State Highway Patrol

The bill's reporting requirement will likely have a no more than a minimal effect on the Ohio State Highway Patrol, as they will be able to compile the required information from their existing e-Citation database and transmit that information electronically to a designated recipient in the Office of the Attorney General.

Attorney General

The Office of the Attorney General will realize an increase in administrative workload to collect the required data and prepare an annual report on violations of the EWCD-while-driving prohibition or the distracted driving law. According to staff of the Attorney General, no supplemental resources will be required to complete the report. Any related costs will be minimal.

Department of Public Safety

The bill requires the written driver's test to test the applicant's knowledge of the use of an EWCD while operating a motor vehicle. This will involve no more than minimal one-time costs for the Department to adopt such rules and to modify the written test.

Bureau of Motor Vehicles

The bill waives, for a first-time offender within a two-year period, the two points that would otherwise be assessed against the offender's driver's license for use of an EWCD while driving if the offender attends and successfully completes the existing distracted driving safety course. This may result in some administrative savings for the Bureau of Motor Vehicles if they no longer need to assess points against the driver's license of certain offenders. However, the amendment may also generate additional administrative work by having to verify that an offender has successfully completed the distracted driving safety course. The net effect on the Bureau of Motor Vehicles is minimal, at most.

The bill also specifies that operating a motor vehicle, trackless trolley, or streetcar while using, holding, or supporting an electronic wireless communications device is a strict liability offense (similar to most other traffic offenses). This provision has no direct fiscal effect, as it is technical in nature. Under Ohio's existing traffic law, prohibitions generally are strict liability offenses. Strict liability exists when a defendant is liable for committing an action, regardless of what that person's intent or mental state was when committing the action.

Department of Transportation

The bill requires the Ohio Department of Transportation (ODOT) to design and erect signs regarding the EWCD-while-driving prohibition. The bill specifies that ODOT is to erect the signs in the following locations: (1) where an interstate or United States route enters Ohio, and (2) where a road, originating from a commercial service airport, exits the airport's property. The one-time

costs for ODOT to design and erect the signs will be approximately \$100,000, to be paid from the Highway Operating Fund (Fund 7002).