



# Ohio Legislative Service Commission

## Bill Analysis

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### **Sub. S.B. 146\*** 131st General Assembly (As Reported by S. Criminal Justice)

**Sens.** Hughes and Seitz, Patton, Jones, Eklund

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## **BILL SUMMARY**

- Creates an enhanced penalty that applies to a person who commits a specified vehicular moving violation while "distracted" if the distraction was the apparent cause of the violation.
- Defines "distracted" to include using a handheld electronic communications device except in specified circumstances or engaging in any activity that is not necessary to the operation of a vehicle and that impairs or reasonably would be expected to impair the ability of the operator to drive the vehicle safely.
- Reenacts provisions of law (severed by the Tenth District Court of Appeals of Ohio due to a violation of the one-subject rule under Article II, Section 15(D) of the Ohio Constitution) that specified that certain electronic wireless communications device violations were allied offenses of similar import.

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## **CONTENT AND OPERATION**

### **Enhanced penalty for distracted driving**

Under the bill, if a person commits any specified moving violation (discussed below) while "distracted" and the distracting activity is the apparent cause of the violation, the person is subject to a fine of \$100 in addition to any applicable penalty for the underlying violation. Subject to Traffic Rule 13, if a person receives a ticket, citation, or summons that indicates that the person committed a specified moving violation while "distracted," the person may pay all applicable fines for the violation (including

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\* This analysis was prepared before the report of the Senate Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

the additional \$100 fine), enter a written guilty plea, and waive the person's right to contest the ticket, citation, or summons. In lieu of paying the additional \$100 fine, the offender may attend a distracted driving safety course established by the Director of Public Safety. If the offender attends and successfully completes the course, the offender will be issued written evidence that the offender successfully completed the course to be submitted to the court and will be required to pay the standard fine established for the violation, but not the additional \$100 fine.<sup>1</sup>

If the person appears in person in a trial to contest the ticket, citation, or summons, and pleads guilty to or is convicted of the violation, the court has discretion to impose the applicable penalty for the underlying violation as well as an additional fine of not more than \$100. If the court imposes upon the offender the additional fine of not more than \$100, the court must inform the offender that, in lieu of payment of the additional fine, the offender instead may choose to attend the distracted driving safety course described above. If the offender attends and successfully completes the course, the offender will be issued written evidence that the offender successfully completed the course to be submitted to the court and will be required to pay the total amount of the fine established for the violation, but not the additional fine of not more than \$100.<sup>2</sup>

### **Definition of "distracted"**

For purposes of the enhanced penalty for distracted driving, "distracted" means doing either of the following while operating a vehicle:

(1) Using a handheld electronic wireless communications device, except when using: the device's speakerphone; a wireless technology standard for exchanging data over short distances; a voice operated or hands-free device that allows the person to use the electronic wireless communications device without the use of either hand except to activate, deactivate, or initiate a feature or function; or any device that is physically or electronically integrated into the motor vehicle.

(2) Engaging in any activity that is not necessary to the operation of a vehicle and that impairs or reasonably would be expected to impair the ability of the operator to drive the vehicle safely.<sup>3</sup>

As used in the bill, "handheld electronic communications device" includes a wireless telephone, a text-messaging device, a personal digital assistant, a computer

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<sup>1</sup> R.C. 4511.991(B)(1).

<sup>2</sup> R.C. 4511.991(B)(2).

<sup>3</sup> R.C. 4511.991(A)(1).



(including a laptop computer and a computer tablet), and any other substantially similar wireless device that is designed or used to communicate text.<sup>4</sup>

### **Exceptions**

Under the bill, "distracted" does not include either of the following:

(1) Operating a motor vehicle while wearing an earphone or earplug over or in both ears at the same time. However, a person who wears earphones or earplugs in that manner may be charged with a violation of the law prohibiting operating a vehicle while wearing earphones over, or earplugs in, both ears.<sup>5</sup>

(2) Conducting any activity while operating a utility service vehicle or a vehicle for or on behalf of a utility, provided that the driver of the vehicle is acting in response to an emergency, power outage, or a circumstance affecting the health or safety of individuals.

As used in the bill, "utility" means a telephone company, an electric light company, a gas company, a natural gas company, or a water-works company. A "utility service vehicle" means a vehicle owned or operated by a utility.<sup>6</sup>

### **Specified moving violations**

Under the bill, the enhanced penalty for committing a moving violation while distracted only applies to specified violations. General descriptions of those specified violations are provided below:

--As the driver of an emergency or public safety vehicle, failing to proceed through a red light, stop signal, or stop sign with due regard for the safety of others (R.C. 4511.03);

--Occupying any portion of a freeway as a pedestrian, with an animal or animal drawn vehicle, or with any other unauthorized vehicle (R.C. 4511.051);

--Disobeying a traffic control device (R.C. 4511.12);

--Failing to stop at a weigh station, if required (R.C. 4511.121);

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<sup>4</sup> R.C. 4511.204(G)(1) and 4511.991(A).

<sup>5</sup> R.C. 4511.991(A)(2).

<sup>6</sup> R.C. 4511.991(A)(3).

- Failing to comply with the requirements related to proceeding through an intersection with a malfunctioning traffic control signal (R.C. 4511.132);
- Committing a speeding violation (R.C. 4511.21 and 4511.211);
- Failing to comply with requirements related to passing specified stationary vehicles that are displaying flashing, oscillating, or rotating lights (R.C. 4511.213);
- Operating a vehicle at an unreasonably slow speed (R.C. 4511.22);
- Operating a vehicle on a highway bridge or other elevated structure at a speed that is greater than the posted maximum speed that can be maintained with safety to the bridge or structure (R.C. 4511.23);
- Operating a vehicle on the wrong side of the road, other than as permitted by law (R.C. 4511.25);
- Failing to give half of the roadway to a vehicle proceeding in the opposite direction (R.C. 4511.26);
- Violating the requirements related to passing a vehicle proceeding in the same direction (R.C. 4511.27, 4511.28, and 4511.29);
- Driving left of center where prohibited (R.C. 4511.30 and 4511.31);
- Driving the wrong direction on a one-way road or through a rotary traffic island (R.C. 4511.32);
- Failing to comply with lane requirements (R.C. 4511.33);
- Following another vehicle more closely than is reasonable and prudent or operating a vehicle in violation of a specified requirement related to following another vehicle (R.C. 4511.34);
- On a divided highway, operating a vehicle other than on the right side or operating over, across, or within the dividing space (R.C. 4511.35);
- Failing to comply with the law governing turning at an intersection or any traffic control device that indicates how to turn at an intersection (R.C. 4511.36);
- Proceeding in the wrong direction upon a curve or near the crest of a grade if the vehicle cannot be seen within 500 feet by a driver proceeding in the opposite direction (R.C. 4511.37);

- Starting a vehicle prior to when movement may be made with reasonable safety, backing up without exercising vigilance, or backing up on a freeway (R.C. 4511.38);
- Turning or changing lanes without exercising due care or failing to use a turn or stop signal (R.C. 4511.39);
- Failing to properly use arm signals, if appropriate (R.C. 4511.40);
- Failing to comply with the provisions of law governing vehicle right-of-way (R.C. 4511.41 and 4511.42);
- Failing to abide by a stop sign or yield sign (R.C. 4511.43);
- Failing to stop before crossing a sidewalk or entering a street from an alley, building, private road, or driveway (R.C. 4511.431);
- Failing to yield the right-of-way before entering or crossing a highway (R.C. 4511.44);
- Failing to yield the right-of-way to a pedestrian on a sidewalk (R.C. 4511.441);
- Failing to yield the right-of-way to a funeral procession or operating a vehicle as part of a funeral procession without displaying a pennant (R.C. 4511.451);
- Failing to yield the right-of-way to a pedestrian where the right-of-way is unclear (R.C. 4511.46);
- Failing to yield the right-of-way to a blind pedestrian who is guided by a guide dog or who is carrying a cane that is predominately white or metallic (R.C. 4511.47);
- Permitting a person on a bicycle, coaster, roller skates, sled, or other toy vehicle to attach their self to a vehicle (R.C. 4511.54);
- Failing to comply with requirements related to operating a bicycle on a roadway (R.C. 4511.55);
- Failing to comply with requirements for proceeding with regard to a streetcar (R.C. 4511.57, 4511.58, and 4511.59);
- Driving through a safety zone (R.C. 4511.60);
- Failing to stop for a railroad grade crossing or failing to exercise due care before proceeding across such a grade crossing (R.C. 4511.61);

- Failing to comply with requirements related to the movement of certain equipment with a low operating speed across a railroad grade crossing (R.C. 4511.64);
- Driving upon, along, or across a highway that is closed and posted with appropriate signs (R.C. 4511.71);
- Driving a vehicle on a sidewalk (R.C. 4511.711);
- Obstructing an intersection, crosswalk, or railroad grade crossing (R.C. 4511.712);
- Operating a motor vehicle, snowmobile, or all-purpose vehicle on a bicycle path (R.C. 4511.713);
- Failing to comply with provisions related to following a public safety or emergency vehicle or parking near a fire truck (R.C. 4511.72); and
- Driving over an unprotected fire hose (R.C. 4511.73).

## Allied offenses

The bill reenacts provisions of law that were severed by the Tenth District Court of Appeals of Ohio in *Linndale v. State*, 2014-Ohio-4024; 19 N.E.3d 935 (10th Dist.). In *Linndale*, the court considered whether Sub. H.B. 606 of the 129th General Assembly violated the one-subject rule under Article II, Section 15(D) of the Ohio Constitution, which provides that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title." Sub. H.B. 606 contained provisions related to the following: (1) the elimination of a judgeship on the Youngstown Municipal Court, (2) an increase in the population threshold for establishing a mayor's court, and (3) the treatment of state and local prohibitions against the use of an electronic wireless communications device while driving as allied offenses of similar import. Upon review, the court determined that the provisions related to the first two subjects above shared a common relationship of regulating the organization and structure of Ohio's statutory courts, but that the provisions regarding the third subject did not. Accordingly, the court found that the provisions related to electronic wireless communications device violations were unconstitutionally enacted and severed those provisions.

The first provision reinstated by the bill specifies that a prosecution for a violation of the law prohibiting the use of a handheld electronic wireless communications device to write, send, or read a text-based communication ("texting while driving") does not preclude a prosecution for a violation of a substantially equivalent municipal ordinance based on the same conduct. However, if an offender is



convicted of or pleads guilty to a violation of the above prohibition and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import under R.C. 2941.25.<sup>7</sup> R.C. 2941.25 provides that where the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one. Alternatively, where the defendant's conduct constitutes two or more offenses of dissimilar import, or where the defendant's conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

The second provision reinstated by the bill specifies that the filing of a sworn complaint against a person for a violation of the law prohibiting a person under the age of 18 from using an electronic wireless communications device in any manner while driving does not preclude the filing of a sworn complaint for a violation of a substantially equivalent municipal ordinance for the same conduct. However, if a person is adjudicated a delinquent child or a juvenile traffic offender for a violation of the prohibition and is also adjudicated a delinquent child or a juvenile traffic offender for a violation of a substantially equivalent municipal ordinance for the same conduct, the two offenses are allied offenses of similar import under R.C. 2941.25.<sup>8</sup>

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## HISTORY

| ACTION                        | DATE     |
|-------------------------------|----------|
| Introduced                    | 04-15-15 |
| Reported, S. Criminal Justice | ---      |

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<sup>7</sup> R.C. 4511.204(F).

<sup>8</sup> R.C. 4511.205(D).

