



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Sub. H.B. 95

132nd General Assembly
(As Passed by the General Assembly)

Reps. Hughes and Seitz, Duffey, Carfagna, Green, T. Johnson, Manning, Patton, Anielski, Antonio, Ashford, Craig, Fedor, Greenspan, Holmes, Ingram, Koehler, Lepore-Hagan, O'Brien, Perales, Sheehy, Sweeney

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Effective date: October 29, 2018

ACT SUMMARY

- Creates an additional penalty that applies when a driver commits a specific traffic violation while "distracted" and the distracted conduct contributes to the commission of the violation.
- Defines "distracted" to generally mean doing either while driving:
 - Using a handheld electronic wireless communications device; or
 - Engaging in activity that is not necessary for the vehicle's operation and that impairs, or reasonably would be expected to impair, the driver's ability to drive safely.
- Specifies that similar state and municipal offenses – related to using a phone while driving – are allied offenses of similar import, meaning that an offender may be **charged** with **both** offenses for the same conduct, but **convicted** of only **one**.

CONTENT AND OPERATION

Additional penalty for distracted driving

The act creates an additional penalty that applies when a person commits certain traffic violations while driving distracted.¹ For example, if a person is eating while driving and, as a result, drives left-of-center, the person may be subject to the additional penalty. (See below for a discussion of what constitutes driving distracted and a list of applicable traffic violations.) If a person is issued a ticket for the underlying traffic violation and distracted driving, the person has the following options:

- (1) The person may enter a guilty plea and waive the right to contest the ticket if the person pays the fine for the underlying violation and an additional fine **equal to** \$100.

However, instead of paying the additional fine, the person may complete a distracted driving safety course established by the Department of Public Safety (DPS). If the person successfully completes the course and submits proof of successful completion to the court, the person is not required to pay the \$100 additional fine.²

- (2) The person may appear in person in a trial to contest the ticket. If the person pleads guilty or is convicted, the court has discretion to impose the fine for the underlying violation and an additional fine of \$100 **or less**.

If the court imposes the additional fine, the court must inform the person that the person may instead attend the distracted driving safety course. If the person successfully completes the course and submits proof of successful completion to the court, the person is not required to pay the additional fine of \$100 or less.³

What constitutes "distracted" driving

A person is distracted when the person operates a vehicle while doing one of the following:

¹ R.C. 4511.991 and various other Revised Code sections.

² R.C. 4511.991(B)(1).

³ R.C. 4511.991(B)(2).



- (1) Using a handheld electronic wireless communications device⁴ (for example, a cell phone), 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 using 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 vehicle's operation and that impairs, or reasonably would be expected to impair, the operator's ability to drive safely (the act does not define "necessary" or "impair").⁵

"Distracted" does not include:

- (1) Operating a motor vehicle while wearing earphones or earplugs over or in both ears (but, a person who wears earphones or earplugs in that manner may be charged with a violation of R.C. 4511.84, which generally prohibits wearing earphones or earplugs in both ears while driving); or
- (2) Conducting any activity while operating a utility service vehicle, if the driver is responding to an emergency ("utility" means a telephone, electric light, gas, natural gas, or water-works company, and a "utility service vehicle" means a vehicle owned or operated by a utility).⁶

Specified traffic violations

The additional penalty for distracted driving only applies to certain traffic violations, which are briefly described below:

⁴ An "electronic wireless communications device" includes (1) a wireless telephone, (2) a text-messaging device, (3) a personal digital assistant, (4) a computer (including a laptop or tablet), and (5) any other substantially similar wireless device designed or used to communicate text. R.C. 4511.991(A)(1).

⁵ R.C. 4511.991(A)(1).

⁶ R.C. 4511.991(A)(2) and (3).



- Proceeding, without regard for another's safety, through a red light, stop signal, or stop sign, as the driver of an emergency or public safety vehicle (R.C. 4511.03);
- Occupying any portion of a freeway as a pedestrian with an animal or any unauthorized vehicle (R.C. 4511.051);
- Disobeying a traffic control device (R.C. 4511.12);
- Failing to stop at a weigh station (R.C. 4511.121);
- Failing to comply with the requirements for 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 for passing certain 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 an elevated structure (e.g., a bridge) at a speed greater than the posted maximum speed (R.C. 4511.23);
- Operating a vehicle on the wrong side of the road, unless an exception applies (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 for 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, or violating a specified requirement for 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 any driver (R.C. 4511.37);
- Starting a vehicle before movement may be made with reasonable safety; backing up either on a freeway or without exercising vigilance (R.C. 4511.38);
- Turning or changing lanes without exercising due care; failing to use a turn or stop signal (R.C. 4511.39);
- Failing to properly use arm signals (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 failing to display a pennant while operating a vehicle in a funeral procession (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 either is guided by a guide dog, or is carrying a predominately white or metallic cane (R.C. 4511.47);
- Permitting a person on a bicycle, coaster, roller skates, sled, or other toy vehicle to attach to a vehicle (R.C. 4511.54);
- Failing to comply with requirements for operating a bicycle on a roadway (R.C. 4511.55);
- Failing to comply with requirements for operating a vehicle near 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 for moving 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 for 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).⁷

Allied offenses for certain violations committed while driving

The act reenacts certain provisions of H.B. 606 of the 129th General Assembly that a court in 2014 found violated the Ohio Constitution's one-subject rule.⁸

The reinstated provisions make certain offenses – ones that involve the use of electronic devices while driving – allied offenses of similar import. Generally, when an offender's conduct can be construed to constitute two or more allied offenses of similar import (that is, the offenses are so similar that committing one necessarily results in committing the other), the offender may be **charged** with **all** of the offenses, but the offenses merge and the offender may be **convicted** of only **one** of them. Ohio's courts have held that, as used in this provision, a "conviction" consists of a guilty verdict and the imposition of a sentence or penalty.⁹

⁷ R.C. 4511.991(B).

⁸ *Limndale v. State*, 2014-Ohio-4024, 19 N.E.3d 935 (10th Dist.); Ohio Const., art. II, Sec. 15(D).

⁹ R.C. 2941.25(A), not in the bill; see, e.g., *State v. Williams* (2016), 148 Ohio St.3d 403.



Texting-while-driving offense

The first reenacted portion addresses the offense of using a handheld electronic wireless communications device to write, send, or read a text-based communication ("texting-while-driving offense"). Specifically, it provides: 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.

However, if an offender:

- Is convicted of or pleads guilty to the state texting-while-driving offense; and
- Is **also** convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance for the same conduct; then
- Those two offenses are allied offenses of similar import R.C. 2941.25.¹⁰

In sum, the offenses are allied offenses, meaning that the offender may be **charged** with **both** offenses, but convicted of only **one** (see **COMMENT**).

Phone-use-by-minors violation

The second reenacted portion addresses a provision of law that prohibits a minor from using an electronic wireless communications device in any manner while driving ("phone-use-by-minors violation"). Specifically, it provides: the filing of a complaint for the state phone-use-by-minors violation **does not preclude** the filing of a separate complaint for a violation of a substantially equivalent municipal ordinance for the same conduct.

However, if an offender:

- Is adjudicated a delinquent child or a juvenile traffic offender for the state phone-use-by-minors violation; and
- Is **also** similarly adjudicated for a violation of a substantially equivalent municipal ordinance for the same conduct; then

¹⁰ R.C. 4511.204(F).



- Those two violations are allied offenses of similar import under R.C. 2941.25.¹¹

In sum, the violations are allied offenses of similar import, meaning that **complaints may be filed** against a minor for **both** violations, but the minor may be adjudicated a delinquent child or juvenile traffic offender for only **one** (see **COMMENT**).

COMMENT

Convictions for allied offenses

Generally, when an offender's conduct can be construed to constitute two or more allied offenses of similar import (that is, the offenses are so similar that committing one necessarily results in committing the other), 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 **one** of them.¹²

The act's intent is to make the state texting-while-driving offense, and a substantially equivalent municipal offense, allied offenses of similar import. Otherwise put, the **two offenses**, prior to conviction, should merge into **one**: the offender would be convicted of either the state texting-while-driving offense or a substantially equivalent municipal ordinance, **but not both**.

The act's language references the allied offenses statute. But, it provides for two convictions. It states that the offenses are allied offenses of similar import if an offender is **convicted** of the state texting-while-driving offense **and is also convicted** of a substantially equivalent municipal ordinance. Thus, the language requires the offenses to merge, but indicates that they merge at the incorrect time – the wording implies that the offenses would merge **after** the conviction stage. This is inconsistent with the allied offense statute, which requires the offenses to merge **before** the conviction stage – resulting in one conviction.¹³

The same issue applies to the state phone-use-by-minors violation and a substantially equivalent municipal ordinance.¹⁴

¹¹ R.C. 4511.205(D); see *In re A.G.*, (2016), 148 Ohio St.3d 118, which held that the allied offenses statute, R.C. 2941.25, applies to juveniles.

¹² R.C. 2941.25(A), not in the bill.

¹³ R.C. 4511.204(F).

¹⁴ R.C. 4511.205(D); see *In re A.G.*, (2016), 148 Ohio St.3d 118, which held that the allied offenses statute, R.C. 2941.25, applies to juveniles.

HISTORY

ACTION	DATE
Introduced	02-27-17
Reported, H. Transportation & Public Safety	05-18-17
Passed House (82-12)	06-21-17
Reported, S. Local Gov't, Public Safety, & Veterans Affairs	10-24-17
Passed Senate (31-1)	06-27-18

