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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

S.B. 285
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Sens. O'Brien and Kunze

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, distracted driving, or driving under suspension 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 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 at most 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 criminal justice systems may experience an increase in workload, adjudication, and incarceration costs related to the bill's use of an electronic wireless communications device while driving and distracted driving prohibitions.
- Local courts and clerks of courts may experience an increase in the number of petitions filed for limited driving privileges and related work.

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).

Detailed Analysis

The bill makes various changes to the laws related to distracted driving and the use of an electronic wireless communications device while driving. While each of these changes alone are likely to result in a no more than minimal fiscal effect for the state or its political subdivisions, it is possible that they could have a combined impact that may exceed minimal for certain political subdivisions. The bill delays the effective date of its new provisions by six months (generally legislation goes into effect 90 days following enactment). During this six-month period however, officers may issue warnings to drivers.

Using an electronic wireless communications device while driving

The bill broadens current law's prohibition against the use of a handheld wireless electronic communications device while driving to include all electronic wireless communications devices generally. The bill also makes the use of an electronic wireless communications device 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.

Citation activity

Under existing law, the use of a handheld electronic wireless communications device while driving is generally considered a secondary offense. This means that a law enforcement officer cannot issue a ticket, citation, or summons for use of an electronic wireless handheld communications device 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 a violation 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 Table 1 below) may already be enforcing distracted driving, including the use of a handheld wireless communications device while driving, as a primary offense.

Table 1. Enforcement of Distracted Driving as a Primary Offense

| 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 |

Table 1. Enforcement of Distracted Driving as a Primary Offense

| Municipalities with Local Ordinances | | | | |
|--------------------------------------|---------------|----------------|----------------|-------------|
| 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.

Penalties

Under existing law, the use of a handheld electronic wireless communications device, as currently defined, while driving is a minor misdemeanor, subject to a fine of up to \$150. Use of an electronic wireless communications device while driving under the bill is an unclassified misdemeanor that carries a fine of \$150 for a first offense, not less than \$250 for a second offense within three years, and not less than \$500 for a third or subsequent offense within three years, in addition to a potential license suspension of not more than one year. The bill prohibits a jail term or community residential sanctions for such offenses.

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, the offender, 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. Under the bill, instead of issuing a citation, law enforcement could potentially arrest the person since the offense is no longer a minor misdemeanor.

The extent to which a law enforcement officer would choose to make an arrest under the bill instead of issuing a citation is uncertain. However, Ohio law permits a law enforcement officer to issue a citation that releases a person on a promise to appear in court or pay a fine for all misdemeanor offenses, with the presumption of a citation issued for minor misdemeanors. As a result, it is likely that at least some, if not most, violators will receive a citation and any increase in costs that may be experienced associated with the arrest of a violator will likely be no more than minimal for any given political subdivision.

Because of increased citations issued under the bill, there will be a corresponding gain in the amount of fine, fee, and court cost revenue that is 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, and court costs and fees are summarized in Table 2 below.

Table 2. S.B. 285 Fine, Fees, and Costs for Use of an Electronic Wireless Communications Device While Driving

| Financial Penalty Component | Amount Paid by Violator | Recipient of Amount |
|-----------------------------|---|--|
| Fine | \$150 for a first offense; not less than \$250 for a second offense; not less than \$500 for a subsequent offense | <ul style="list-style-type: none"> ▪ Retained by county if cited by local law enforcement as a violation of state law ▪ Forwarded for deposit into the state Security, Investigations, and Policing Fund (Fund 8400) if violator is cited by the Ohio State Highway Patrol |
| 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) ▪ \$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) |

Distracted driving

The bill modifies existing law's definition of distracted driving to include use of an electronic wireless communications device and retains a provision of current law that allows for an additional fine of \$100 for a moving violation in which distracted driving was a contributing factor in addition to the fine for the underlying violation. Under existing law, unchanged by the bill, a person may attend a distracted driving safety course offered by the Department of Public Safety in lieu of paying the additional \$100 fine. The bill also expands the moving violations for which the additional distracted driving penalty would apply to include failure to control and failure to stop for a stopped school bus.

The magnitude of any additional revenue generated by the bill's modifications to existing law's additional distracted driving penalty on any given political subdivision is likely to vary based upon the number of additional citations issued. Similarly, if the number of such citations increases, it is possible that there will also be an increase in participation for the distracted driving safety course offered online by the Department of Public Safety. The net effect of any additional fine revenue generated will depend upon the number of additional citations issued along with the number of those who opt to take the Department's online distracted driving safety course in lieu of paying the additional \$100 fine.

Criminal prohibitions

The bill creates the offense of vehicular harm, a first degree misdemeanor, which prohibits a person from causing serious physical harm to a person or property while distracted. Under existing law, unchanged by the bill, a first degree misdemeanor is punishable by a fine of

up to \$1,000, up to 180 days in a locally operated jail, or both. While a person committing such an offense could likely be criminally charged under existing law, it is possible that under the bill, the offender may be charged with a more serious offense carrying more restrictive sanctions. The impact on state and local criminal justice systems will depend upon the number of individuals charged with vehicular harm and whether or not they would have been charged, as well as what they would have been charged with, under current law.

The bill's changes to the law pertaining to aggravated vehicular homicide and aggravated vehicular assault are unlikely to have a significant effect on state and local criminal justice systems. Due to the seriousness of the offense, it is likely that individuals charged with aggravated vehicular homicide or aggravated vehicular assault under the bill would be charged and prosecuted under existing law, so the bill is not expected to generate additional cases for courts of common pleas to adjudicate. However, it is possible that under the bill, the offender will receive a longer period of incarceration than they otherwise would have under existing law. Under existing law, unchanged by the bill, both offenses are felonies, meaning that any period of incarceration would be spent at a state-operated prison in the custody of the Department of Rehabilitation and Correction. Any impact will depend upon the number of offenders sentenced under the bill and the period of incarceration that exceeds what they would have otherwise received under existing law.

For calendar years (CYs) 2017-2019, the number of offenders committed to prison annually for aggravated vehicular homicide and aggravated vehicular assault averaged 115 and 83, respectively. The most recent time-served reports for CYs 2015 and 2016 show the following: (1) offenders committed for aggravated vehicular homicide served, depending on the felony level, approximately 1.6 to 7 years, and (2) offenders committed for aggravated vehicular assault served, depending on the felony level, approximately 1 to 4 years.

License suspensions

The bill modifies the number of points assessed for motor vehicle offenses by assessing additional points for violations that occur when the operator of the vehicle was distracted or texting. As a result, additional license suspensions may be imposed due to individuals accumulating 12 points on their license when they otherwise may not have, or earlier than they otherwise would have, under current law. In the event that additional license suspensions are imposed, there may be an increase in the number of petitions that are subsequently filed for limited driving privileges creating additional work for courts and clerks of courts. Those costs may be at least partially offset by the collection of a filing fee for those courts that charge one. The magnitude of any increase for local courts will depend upon the number of additional licenses that are suspended. Additionally, if more licenses are suspended, the Bureau of Motor Vehicles should experience a corresponding increase in license reinstatement fee revenue. The cost to reinstate a 12-point license suspension is \$40.

Driving under suspension citations

A byproduct of the bill is that there may be some increase in the number of persons cited for driving under suspension. Driving under suspension or in violation of a license restriction is generally a first degree misdemeanor, subject to a fine of up to \$1,000, a jail term not to exceed 180 days, or both. Any resulting increase in citations issued creates a potential increase in expenditures for the courts and clerks of courts that process these matters, as well

as the Bureau of Motor Vehicles that administers the license suspension system. Additional convictions would mean a related gain in fine, fee, and court cost revenue retained by counties and municipalities, as well as a gain in statutorily required court costs that are forwarded to the state. Any expenditure increase and revenue gain resulting from an increase in driving under suspension citations would likely be minimal, at most, annually. In CY 2018, there were 28,626 convictions statewide for driving with a suspended license.

Signs to be erected by the Ohio Department of Transportation

The bill requires the Ohio Department of Transportation (ODOT) to design and erect signs regarding the prohibition against using an electronic wireless communications device while driving. The bill specifies that ODOT shall erect these 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. Costs to ODOT to design and erect the signs may be up to around \$100,000, and will be paid from the Highway Operating Fund (Fund 7002).

Department of Public Safety

The bill requires the Department of Public Safety to adopt rules modifying the driver's education instruction requirements to include the dangers of driving distracted and engaging in any other activity that distracts a driver from the safe and effective operation of a vehicle. This will involve no more than minimal one-time costs for the Department to adopt such rules.