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H.B. 283*
134th General Assembly

Bill Analysis

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Version: As Reported by House Criminal Justice

Primary Sponsors: Reps. Abrams and Lampton

Margaret E. Marcy, Attorney

SUMMARY

Hands-free law

Prohibition and exemptions

- Broadens the existing texting-while-driving prohibition to prohibit a person from using, holding, or physically supporting an electronic wireless communications device (EWCD) while operating a motor vehicle, trackless trolley, or streetcar.
- Makes the EWCD-while-driving prohibition a primary offense (rather than a secondary offense for adults, as in current law).
- Modifies current exemptions and creates additional exemptions to the new EWCD-while-driving prohibition by generally allowing only limited and mostly hands-free use of an EWCD while driving.
- Specifies what devices constitute an EWCD, but exempts a two-way radio transmitter and receiver used for the Amateur Radio Service.

Penalties

- Changes the existing minor misdemeanor penalty for texting while driving to an unclassified misdemeanor for the new EWCD-while-driving prohibition with increasing tiered penalties for violations within a two-year period.

* This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

Device seizure and reporting requirements

- Prohibits a law enforcement officer from stopping a driver unless the officer observes the driver using, holding, or physically supporting the EWCD.
- Prohibits an officer from seizing and searching a person's EWCD when stopped for a violation of the EWCD-while-driving prohibition unless the officer has a warrant or the person voluntarily and unequivocally consents to the search.
- Establishes reporting requirements for law enforcement officers, law enforcement agencies, and the Attorney General related to the race of offenders issued a ticket, citation, or summons for a violation of the EWCD-while-driving law or the distracted driving law.

Education

- Requires public education regarding the EWCD-while-driving laws through all of the following mechanisms:
 - A signed statement at the time of driver's license issuance and renewal;
 - Instruction through drivers' education courses;
 - Questions on the written exams required before obtaining a driver's license; and
 - Signs on certain highways and locations entering Ohio.
- Aligns the distracted driving law to the changes in the EWCD-while-driving law and makes corrective changes in both laws.

Interim enforcement period

- Specifies that for the first six months after the bill's effective date, a law enforcement officer may only issue a written warning to a driver for violating the EWCD-while-driving prohibition, but may fully enforce the prohibition after that interim.

DETAILED ANALYSIS

Texting while driving vs. hands-free law

Ohio law currently prohibits texting while driving. That is, a person is prohibited from using a handheld electronic wireless communications device (an EWCD) to "write, send, or read a text-based communication."¹ The prohibition generally encompasses texting, writing e-mails, and viewing news articles and other internet-related information. However, specific exemptions still allow a person to hold a phone and manually enter numbers, letters, and other information under certain circumstances, such as while making a phone call or inputting GPS

¹ R.C. 4511.204(A).

information for navigation.² Additionally, current law is silent regarding other uses of an EWCD beyond texting (e.g., live-streaming, attending virtual meetings, recording videos, and using other phone applications).

The bill expands current law and prohibits, in most circumstances, a person from *using, holding, or physically supporting* with any part of the person's body any EWCD (not just handheld) while operating a motor vehicle on any street, highway, or public property. Thus, rather than a prohibition against only texting, the bill creates a general hands-free law (with respect to an EWCD).³

What constitutes an EWCD

The bill expands the meaning of EWCD beyond the wireless telephones, text-messaging devices, personal digital assistants, and computers, laptops, and tablets encompassed by current law. Specifically, any device capable of displaying a video, movie, broadcast television image, or visual image is also expressly included. Additionally, any substantially similar wireless device that is designed or used to communicate text, initiate or receive communication, or exchange information or data is also considered an EWCD. The only general exemption is a two-way radio transmitter or receiver used by a person licensed by the Federal Communications Commission to participate in the Amateur Radio Service. Thus, such radios may still be generally used and are not subject to the prohibitions and limitations of other types of EWCDs.⁴

Primary offense

The bill makes the general prohibition against using, holding, or supporting an EWCD while driving a primary offense. A primary offense means that a law enforcement officer may issue a ticket for the offense solely for a violation of that offense. When an offense is a secondary offense, the law enforcement officer may only stop a driver if the driver is actively committing a primary offense at the same time as the secondary offense. Under current law, texting while driving is a secondary offense for adults and a primary offense for minors.⁵

Exemptions

Similar to current law's exemptions to the texting-while-driving prohibition, the bill establishes exemptions to the hands-free law. The exemptions are further elaborated in the following table. To note: the exemptions under current law are to a texting-while-driving prohibition, while the exemptions under the bill are to the broader hands-free EWCD-while-driving prohibition.

² R.C. 4511.204(B).

³ R.C. 4511.204(A). The prohibition also includes operation of a trackless trolley or streetcar, but for simplicity, the analysis will focus on the more commonly found motor vehicles.

⁴ R.C. 4511.204(H)(1).

⁵ R.C. 4511.043 and 4511.204(C)(1); R.C. 4511.205, not in the bill.

| Exemptions to the general prohibition ⁶ | | |
|---|--|---|
| Topic | Current law | Under the bill |
| Emergency (Division (B)(1)) | For emergency purposes, <i>including</i> an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity. | Same. |
| Public safety vehicle (Division (B)(2)) | A person driving a public safety vehicle who uses a handheld EWCD while driving in the course of the person's duties. (Implies that if any use is necessary, then all use is exempt.) | Narrows the exemption to apply only to a person's use of the EWCD within the course of the person's duties. |
| Stationary position (Division (B)(3)) | When the motor vehicle is in a stationary position and outside a lane of travel. | Broadens the exemption to include: <ol style="list-style-type: none"> 1. When the motor vehicle is in a stationary position at a red light; and 2. When the motor vehicle is parked on a road or highway due to an emergency or road closure. |
| Phone calls (Division (B)(4)) | Reading, selecting, or entering a name or telephone number into the handheld EWCD for making or receiving a telephone call. | Authorizes making, receiving, or conducting a telephone call, and holding the device directly near the person's ear, but prohibits manually entering letters, numbers, or symbols into the device. |
| Receiving certain safety information (Division (B)(5)) | Any receipt of wireless messages regarding operation or navigation of the motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle. | Narrows the exemption to prohibit the person from holding or supporting the device with any part of the person's body. |
| Radio waves (Division (B)(6)) | Any wireless messages via radio waves. | No provision. |

⁶ R.C. 4511.204(B).

| Exemptions to the general prohibition ⁶ | | |
|--|---|---|
| Topic | Current law | Under the bill |
| Speaker phone <i>(Division (B)(6))</i> | No provision. | Authorizes the use of an EWCD with the speaker phone function, provided the person does not hold or support the device with any part of the person's body. |
| Navigation <i>(Division (B)(7))</i> | Any use for navigation purposes. | Narrows the exemption to prohibit: <ol style="list-style-type: none"> 1. Manually entering letters, numbers, or symbols into the device; and 2. Holding or supporting the device with any part of the person's body. |
| Wireless interpersonal communication <i>(Division (B)(8))</i> | Any wireless interpersonal communication that does not require manually entering letters, numbers, or symbols or reading text message, except to activate, deactivate, or initiate the device or feature to function of the device. | No provision. |
| Single touch/swipe <i>(Division (B)(8))</i> | No provision. | Authorizes using a feature or function with a single touch or single swipe provided the person does not: <ol style="list-style-type: none"> 1. Manually enter letters, numbers, or symbols into the device; and 2. Hold or support the device with any part of the person's body. |
| Commercial truck <i>(Division (B)(9))</i> | A person operating a commercial truck while using a mobile data terminal that transmits and receives data. | Same. |
| Utility service vehicle <i>(Division (B)(10))</i> | No provision in R.C. 4511.204. The Distracted Driving law (R.C. 4511.991) includes a similar exemption. | Authorizes use by person operating a utility service vehicle or 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. |

| Exemptions to the general prohibition ⁶ | | |
|--|--|--|
| Topic | Current law | Under the bill |
| Voice-operated or hands-free device <i>(Division (B)(11))</i> | Using device in conjunction with a voice-operated or hands-free device feature or function of the vehicle. | Narrows the exemption to specify that use of the feature must be done with a single touch or swipe and the person cannot hold or support the device with any part of the person's body. |
| Other technology <i>(Division (B)(12))</i> | No provision (but related to the immediately preceding exemption, above). | Authorizes the use of an EWCD with technology that physically or electronically integrates the device into the motor vehicle, provided the person does not: <ol style="list-style-type: none"> 1. Manually enter letters, numbers, or symbols into the device; and 2. Hold or support the device with any part of the person's body. |
| Device storage <i>(Division (B)(13))</i> | No provision. | Exempts a person storing an EWCD in a holster, harness, or article of clothing (which would otherwise place the EWCD in a position that appears to be either holding or physically supporting the device). |

Penalties

The bill applies a different penalty scheme for using, holding, or supporting an EWCD while driving. Under current law, a violation of the texting-while-driving prohibition is a minor misdemeanor, punishable by a fine of up to \$150.⁷ The bill changes the penalty to an unclassified misdemeanor, with tiered penalties, as follows:

1. For a first offense: up to \$150 and 2 points on the offender's driver's license;
2. For a second offense within two years: up to \$250 and 3 points on the offender's driver's license;

⁷ R.C. 4511.204(E); R.C. 2929.28, not in the bill.

3. For a third or subsequent offense within two years: up to \$500 and 4 points on the offender's driver's license. In addition to the fines, the court may impose a 90-day driver's license suspension on the offender.⁸

Related to the fines, the court must double the fine if the offender was driving in an active construction zone at the time of the offense. Also, for a first offense (within two years), the offender has the option of taking the Department of Public Safety Distracted Driving Safety Course (already established under current law). If the offender attends and successfully completes the course, the offender will receive written confirmation of its completion. The offender can submit the confirmation to the court, and the court must waive the fine and the 2 points on the offender's driver's license.⁹

In addition to the penalties above, a court may impose any other penalties for a misdemeanor, but may not impose a jail term, community residential sanction, or any fine or suspension, not otherwise authorized by the bill. Violation of EWCD-while-driving prohibition is a strict liability offense.¹⁰

Stopping drivers and device seizure

The bill prohibits a law enforcement officer from stopping a driver for purposes of enforcing the EWCD-while-driving prohibition unless the officer visually observes the driver using, holding, or physically supporting with any part of the person's body the EWCD. Without that visual observation, the officer does not have probable cause for the stop. It is unclear how this requirement will operate regarding a person holding an EWCD to their ear for purposes of a telephone call (see, **Exemptions**, above).

Additionally, the bill expressly prohibits a law enforcement officer from seizing and searching a person's EWCD without a warrant after the person is stopped for a violation of the bill's general prohibition. The officer is prohibited from:

1. Accessing the device without a warrant, unless the person voluntarily and unequivocally gives consent for the officer to access the device;
2. Confiscating the device while awaiting the issuance of a warrant;
3. Obtaining consent from the person to access the device through coercion or any other improper means.

A law enforcement officer is required to inform any person stopped for an EWCD violation that the person may decline to have the EWCD searched.¹¹

⁸ R.C. 4510.036(C)(13) and 4511.204(D)(1) and (4).

⁹ R.C. 4511.204(D)(1) and (2).

¹⁰ R.C. 4511.204(D)(3).

¹¹ R.C. 4511.204(G).

Reporting requirements

The bill requires a law enforcement officer who issues a ticket, citation, or summons to any person for violating the EWCD-while-driving prohibition or to any person for violating the distracted driving law to do both of the following:

1. Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency; and
2. Ensure that the report indicates the offender's race.

Every other month, the agency must collect all of the reports from its officers and submit a compiled report to the Attorney General. The compiled report must include the number and race of the offenders who received a ticket, citation, or summons for violations of the two laws during the prior two months.

Using the submitted information, the Attorney General must complete an annual report describing the total number of offenders by race who received a ticket, citation, or summons for violations of the EWCD-while-driving prohibition or the distracted driving law. The report must include the totals for the state and the totals for each law enforcement agency. Upon completion of the report, the Attorney General must submit it to the Governor, the Speaker of the House, and the President of the Senate.¹²

Other provisions

Driver education

The bill creates multiple opportunities for driver education related to the EWCD-while-driving prohibition and distracted driving. First, it requires the Registrar to create a one-page summary of the laws, including the prohibition, the exemptions, and the penalties. The Registrar or a deputy registrar must give every applicant a copy of the summary to sign when applying for any of the following:

1. A temporary instruction permit;
2. A driver's license;
3. A commercial driver's license;
4. A motorized bicycle license;
5. A motorcycle operator's license; and
6. The renewal of any of the above.

¹² R.C. 4511.204(C)(2), 4511.991(C), and 4511.992.

The signature of the applicant may be manual or electronic, and the applicant must receive either a physical or an electronic copy of the statement. The applicant's signature, however, does not excuse a violation of the EWCD-while-driving laws.¹³

Additionally, the bill requires the written exam taken before obtaining any sort of driver's license to include questions related to the EWCD-while-driving laws. Current law requires the exam to cover the laws governing stopping for school buses and understanding traffic control devices. Relatedly, the bill also requires drivers' education courses to cover the dangers of distracted driving. The courses must include the dangers of using an EWCD while operating a motor vehicle and the dangers of engaging in any other activity that distracts a driver from the safe and effective operation of a motor vehicle.¹⁴

Finally, the bill requires the Department of Transportation (ODOT) to include a sign warning drivers of the prohibition against using an EWCD-while-driving in ODOT's Manual for a Uniform System of Traffic Control Devices. ODOT must place the signs along an interstate highway or U.S. route as it enters Ohio and along any roads exiting a commercial airport's property. Thus, the signs warn drivers entering Ohio of Ohio's EWCD-while-driving prohibition.¹⁵

Distracted driving

The bill changes what constitutes "distracted" in the distracted driving law to align the meaning with the bill's new EWCD-while-driving prohibition. Under current law, the term "distracted" is defined in two parts:

1. Using an electronic wireless communications device, as defined in the texting-while driving laws, while driving (with specified exemptions); 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.¹⁶

The bill alters (1) above to specify that using an EWCD in violation of the general prohibition constitutes distracted driving. The bill retains (2) above. As such, if a person violates the EWCD-while-driving prohibition and that violation is a "contributing factor" to the commission of another specified moving violation, the person may be penalized for the EWCD-while-driving violation, the underlying moving violation, and be subject to the extra \$100 fine for distracted driving.¹⁷

¹³ R.C. 4507.214.

¹⁴ R.C. 4507.11 and 4508.02.

¹⁵ R.C. 4511.122.

¹⁶ R.C. 4511.991(A)(1).

¹⁷ R.C. 4511.991(B).

Allied offenses

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. The law 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 one. However, current law implies that a person may be convicted of both offenses. As such, the bill clarifies that there may only be one conviction.¹⁸

Interim enforcement period

Finally, the bill specifies that for the first six months after the bill's effective date, a law enforcement officer may only issue a written warning to a driver for violating the EWCD-while-driving prohibition. The officer may stop a driver for the violation, as amended by the bill, but may not issue a ticket, citation, or summons for the violation. The written warning may notify the driver of when the interim period is ending. After the interim period, an officer may fully enforce the prohibition.¹⁹

HISTORY

| Action | Date |
|-------------------------------|----------|
| Introduced | 05-03-21 |
| Reported, H. Criminal Justice | --- |

ANHB0283RH-134/ts

¹⁸ R.C. 4511.204(F).

¹⁹ Section 3.