

Sub. H.B. 33
As Passed by the Senate
DPSCD75

_____ moved to amend as follows:

In line 140 of the title, after "4511.191," insert 1
"4511.204," 2

In line 141 of the title, after "4511.76," insert "4511.991," 3

In line 865, after "4511.191," insert "4511.204, "; after 4
"4511.76," insert "4511.991," 5

After line 81248, insert: 6

"**Sec. 4511.204.** (A) No person shall operate a motor vehicle, 7
trackless trolley, or streetcar on any street, highway, or 8
property open to the public for vehicular traffic while using, 9
holding, or physically supporting with any part of the person's 10
body an electronic wireless communications device. 11

(B) Division (A) of this section does not apply to any of the 12
following: 13

(1) A person using an electronic wireless communications 14
device to make contact, for emergency purposes, with a law 15
enforcement agency, hospital or health care provider, fire 16
department, or other similar emergency agency or entity; 17

(2) A person driving a public safety vehicle while using an 18

electronic wireless communications device in the course of the 19
person's duties; 20

(3) A person using an electronic wireless communications 21
device when the person's motor vehicle is in a stationary position 22
and is outside a lane of travel, at a traffic control signal that 23
is currently directing traffic to stop, or parked on a road or 24
highway due to an emergency or road closure; 25

(4) A person using and holding an electronic wireless 26
communications device directly near the person's ear for the 27
purpose of making, receiving, or conducting a telephone call, 28
provided that the person does not manually enter letters, numbers, 29
or symbols into the device; 30

(5) A person receiving wireless messages on an electronic 31
wireless communications device regarding the operation or 32
navigation of a motor vehicle; safety-related information, 33
including emergency, traffic, or weather alerts; or data used 34
primarily by the motor vehicle, provided that the person does not 35
hold or support the device with any part of the person's body; 36

(6) A person using the speaker phone function of the 37
electronic wireless communications device, provided that the 38
person does not hold or support the device with any part of the 39
person's body; 40

(7) A person using an electronic wireless communications 41
device for navigation purposes, provided that the person does not 42
do either of the following during the use: 43

(a) Manually enter letters, numbers, or symbols into the 44
device; 45

(b) Hold or support the device with any part of the person's 46
body; 47

(8) A person using a feature or function of the electronic wireless communications device with a single touch or single swipe, provided that the person does not do either of the following during the use:

(a) Manually enter letters, numbers, or symbols into the device;

(b) Hold or support the device with any part of the person's body.

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person operating a utility service vehicle or a 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;

(11) A person using an electronic wireless communications device in conjunction with a voice-operated or hands-free feature or function of the vehicle or of the device without the use of either hand except to activate, deactivate, or initiate the feature or function with a single touch or swipe, provided the person does not hold or support the device with any part of the person's body;

(12) A person using technology that physically or electronically integrates the device into the motor vehicle, provided that the person does not do either of the following during the use:

(a) Manually enter letters, numbers, or symbols into the device;

(b) Hold or support the device with any part of the person's body.

(13) A person storing an electronic wireless communications device in a holster, harness, or article of clothing on the person's body.

(C)(1) On January 31 of each year, the department of public safety shall issue a report to the general assembly that specifies the number of citations issued for violations of this section during the previous calendar year.

(2) If a law enforcement officer issues an offender a ticket, citation, or summons for a violation of division (A) of this section, the officer shall do both of the following:

(a) Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency;

(b) Ensure that such report indicates the offender's race.

(D)(1) Whoever violates division (A) of this section is guilty of operating a motor vehicle while using an electronic wireless communication device, an unclassified misdemeanor;

(a) Except as provided in divisions (D)(1)(b), (c), (d), and (2) of this section, the court shall impose upon the offender a fine of not more than one hundred fifty dollars.

(b) If, within two years of the violation, the offender has been convicted of or pleaded guilty to one prior violation of this section or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than two hundred fifty dollars.

(c) If, within two years of the violation, the offender has been convicted of or pleaded guilty to two or more prior violations of this section or a substantially equivalent municipal ordinance, the court shall impose upon the offender a fine of not more than five hundred dollars. The court also may impose a

suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for ninety days. 106
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(d) Notwithstanding divisions (D)(1)(a) to (c) of this section, if the offender was operating the motor vehicle at the time of the violation in a construction zone where a sign was posted in accordance with section 4511.98 of the Revised Code, the court, in addition to all other penalties provided by law, shall impose upon the offender a fine of two times the amount imposed for the violation under division (D)(1)(a), (b), or (c) of this section, as applicable. 109
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(2) In lieu of payment of the fine of one hundred fifty dollars under division (D)(1)(a) of this section and the assessment of points under division (D)(4) of this section, the offender instead may elect to attend the distracted driving safety course, as described in section 4511.991 of the Revised Code. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall not be required to pay the fine and shall not have the points assessed against that offender's driver's license if the offender submits the written evidence to the court within 90 days of the violation of division (A) of this section. However, successful completion of the course does not result in a dismissal of the charges for the violation, and the violation is a prior offense under divisions (D)(1)(b) and (c) of this section if the offender commits a subsequent violation or violations of division (A) of this section within two years of the offense for which the course was completed. 117
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(3) The court may impose any other penalty authorized under 135

sections 2929.21 to 2929.28 of the Revised Code. However, the court shall not impose a fine or a suspension not otherwise specified in division (D)(1) of this section. The court also shall not impose a jail term or community residential sanction.

(4) Except as provided in division (D)(2) of this section, points shall be assessed for a violation of division (A) of this section in accordance with section 4510.036 of the Revised Code.

(5) The offense established under this section is a strict liability offense and section 2901.20 of the Revised Code does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense, for which there is no specified degree of culpability, is not a strict liability offense.

(E) This section shall not be construed as invalidating, preempting, or superseding a substantially equivalent municipal ordinance that prescribes penalties for violations of that ordinance that are greater than the penalties prescribed in this section for violations of this section.

(F) A prosecution for an offense in violation of this section does not preclude a prosecution for an offense in violation of a substantially equivalent municipal ordinance based on the same conduct. However, the two offenses are allied offenses of similar import under section 2941.25 of the Revised Code.

(G)(1) A law enforcement officer does not have probable cause and shall not stop the operator of a motor vehicle for purposes of enforcing this section unless the officer visually observes the operator using, holding, or physically supporting with any part of the person's body the electronic wireless communications device.

(2) A law enforcement officer who stops the operator of a

motor vehicle, trackless trolley, or streetcar for a violation of 165
division (A) of this section shall inform the operator that the 166
operator may decline a search of the operator's electronic 167
wireless communications device. The officer shall not do any of 168
the following: 169

(a) Access the device without a warrant, unless the operator 170
voluntarily and unequivocally gives consent for the officer to 171
access the device; 172

(b) Confiscate the device while awaiting the issuance of a 173
warrant to access the device; 174

(c) Obtain consent from the operator to access the device 175
through coercion or any other improper means. Any consent by the 176
operator to access the device shall be voluntary and unequivocal 177
before the officer may access the device without a warrant. 178

(H) As used in this section: 179

(1) "Electronic wireless communications device" includes any 180
of the following: 181

(a) A wireless telephone; 182

(b) A text-messaging device; 183

(c) A personal digital assistant; 184

(d) A computer, including a laptop computer and a computer 185
tablet; 186

(e) Any device capable of displaying a video, movie, 187
broadcast television image, or visual image; 188

(f) Any other substantially similar wireless device that is 189
designed or used to communicate text, initiate or receive 190
communication, or exchange information or data. 191

An "electronic wireless communications device" does not
include a two-way radio transmitter or receiver used by a person
who is licensed by the federal communications commission to
participate in the amateur radio service.

(2) "Voice-operated or hands-free feature or function" means
a feature or function that allows a person to use an electronic
wireless communications device without the use of either hand,
except to activate, deactivate, or initiate the feature or
function with a single touch or single swipe.

(3) "Utility" means an entity specified in division (A), (C),
(D), (E), or (G) of section 4905.03 of the Revised Code.

(4) "Utility service vehicle" means a vehicle owned or
operated by a utility."

After line 81570, insert:

"**Sec. 4511.991.** (A) As used in this section and each section
referenced in division (B) of this section, all of the following
apply:

(1) "Distracted" means doing either of the following while
operating a vehicle:

(a) Using an electronic wireless communications device, as
defined in section 4511.204 of the Revised Code, in violation of
that section-i

(b) Engaging in any activity that is not necessary to the
operation of a vehicle and impairs, or reasonably would be
expected to impair, the ability of the operator to drive the
vehicle safely.

(2) "Distracted" does not include operating a motor vehicle
while wearing an earphone or earplug over or in both ears at the

same time. A person who so wears earphones or earplugs may be charged with a violation of section 4511.84 of the Revised Code. 220
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(3) "Distracted" does not include 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. 222
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As used in division (A)(3) of this section: 227

(a) "Utility" means an entity specified in division (A), (C), (D), (E), or (G) of section 4905.03 of the Revised Code. 228
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(b) "Utility service vehicle" means a vehicle owned or operated by a utility. 230
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(B) If an offender violates section 4511.03, 4511.051, 4511.12, 4511.121, 4511.132, 4511.21, 4511.211, 4511.213, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.44, 4511.441, 4511.451, 4511.46, 4511.47, 4511.54, 4511.55, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, or 4511.73 of the Revised Code while distracted and the distracting activity is a contributing factor to the commission of the violation, the offender is subject to the applicable penalty for the violation and, notwithstanding section 2929.28 of the Revised Code, is subject to an additional fine of not more than one hundred dollars as follows: 232
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(1) Subject to Traffic Rule 13, if a law enforcement officer issues an offender a ticket, citation, or summons for a violation of any of the aforementioned sections of the Revised Code that 246
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indicates that the offender was distracted while committing the violation and that the distracting activity was a contributing factor to the commission of the violation, the offender may enter a written plea of guilty and waive the offender's right to contest the ticket, citation, or summons in a trial provided that the offender pays the total amount of the fine established for the violation and pays the additional fine of one hundred dollars.

In lieu of payment of the additional fine of one hundred dollars, the offender instead may elect to attend a distracted driving safety course, the duration and contents of which shall be established by the director of public safety. If the offender attends and successfully completes the course, the offender shall be issued written evidence that the offender successfully completed the course. The offender shall be required to pay the total amount of the fine established for the violation, but shall not be required to pay the additional fine of one hundred dollars, so long as the offender submits to the court both the offender's payment in full and such written evidence within ninety days of the underlying violation that resulted in the imposition of the additional fine under division (B) of this section.

(2) If the offender appears in person to contest the ticket, citation, or summons in a trial and the offender pleads guilty to or is convicted of the violation, the court, in addition to all other penalties provided by law, may impose the applicable penalty for the violation and may impose the additional fine of not more than one hundred dollars.

If the court imposes upon the offender the applicable penalty for the violation and an additional fine of not more than one hundred dollars, the court shall inform the offender that, in lieu of payment of the additional fine of not more than one hundred

dollars, the offender instead may elect to attend the distracted
driving safety course described in division (B)(1) of this
section. If the offender elects the course option and attends and
successfully completes the course, the offender shall be issued
written evidence that the offender successfully completed the
course. The offender shall be required to pay the total amount of
the fine established for the violation, but shall not be required
to pay the additional fine of not more than one hundred dollars,
so long as the offender submits to the court the offender's
payment and such written evidence within ninety days of the
underlying violation that resulted in the imposition of the
additional fine under division (B) of this section.

(C) If a law enforcement officer issues an offender a ticket,
citation, or summons for a violation of any of the sections of the
Revised Code listed in division (B) of this section that indicates
that the offender was distracted while committing the violation
and that the distracting activity was a contributing factor to the
commission of the violation, the officer shall do both of the
following:

(1) Report the issuance of the ticket, citation, or summons
to the officer's law enforcement agency;

(2) Ensure that such report indicates the offender's race."

In line 124688, after "4511.191," insert "4511.204,"; after
"4511.76," insert "4511.991,"

The motion was _____ agreed to.

SYNOPSIS

Distracted driving penalties	303
R.C. 4511.204 and 4511.991	304
Restores provisions from the House-passed version of the bill	305
that specify that the following apply regarding the opportunity to	306
take a distracted driving safety course in lieu of paying a fine	307
and incurring points for the offense of driving while using an	308
electronic wireless communication device (EWCD):	309
1. Evidence of course completion must be submitted to the	310
court within 90 days of the offense; and	311
2. Successful completion of the course does not result in a	312
dismissal of the charges for the violation, and the violation	313
constitutes a prior offense if the offender is subsequently	314
convicted of an EWCD violation within two years of the initial	315
offense.	316
Regarding the opportunity to take a distracted driving safety	317
course in lieu of paying a \$100 fine for distracted driving,	318
restores a provision from the House-passed version of the bill	319
that requires the course to be completed within 90 days of the	320
underlying offense that resulted in the imposition of the	321
distracted driving fine.	322