

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 88

Representative Sheehy

Cosponsors: Representatives Ashford, Lepore-Hagan, Stinziano

A BILL

To amend sections 4511.043, 4511.204, and 4511.205
of the Revised Code to prohibit the use of an
electronic wireless communications device while
operating a vehicle in a school zone during
hours when children are present outside or in a
construction zone during hours of actual work,
to specify that the offenses related to the use
of a handheld electronic wireless communications
device while driving apply to the operation of
all vehicles rather than all motor vehicles as
under current law, and to make driving a vehicle
while using a handheld electronic wireless
communications device to write, send, or read a
text-based communication a primary rather than
secondary traffic offense.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4511.043, 4511.204, and 4511.205
of the Revised Code be amended to read as follows:

Sec. 4511.043. (A) (1) No law enforcement officer who stops
the operator of a motor vehicle in the course of an authorized

sobriety or other motor vehicle checkpoint operation or a motor vehicle safety inspection shall issue a ticket, citation, or summons for a secondary traffic offense unless in the course of the checkpoint operation or safety inspection the officer first determines that an offense other than a secondary traffic offense has occurred and either places the operator or a vehicle occupant under arrest or issues a ticket, citation, or summons to the operator or a vehicle occupant for an offense other than a secondary offense.

(2) A law enforcement agency that operates a motor vehicle checkpoint for an express purpose related to a secondary traffic offense shall not issue a ticket, citation, or summons for any secondary traffic offense at such a checkpoint, but may use such a checkpoint operation to conduct a public awareness campaign and distribute information.

(B) As used in this section, "secondary traffic offense" means a violation of division (A) or (F) (2) of section 4507.05, division (B) (1) (a) or (b) or (E) of section 4507.071, ~~division (A) of section 4511.204,~~ division (C) or (D) of section 4511.81, division (A) (3) of section 4513.03, or division (B) of section 4513.263 of the Revised Code.

Sec. 4511.204. (A) No person shall drive a ~~motor~~ vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

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

(1) A person using a handheld electronic wireless

communications device in that manner for emergency purposes, 49
including an emergency contact with a law enforcement agency, 50
hospital or health care provider, fire department, or other 51
similar emergency agency or entity; 52

(2) A person driving a public safety vehicle who uses a 53
handheld electronic wireless communications device in that 54
manner in the course of the person's duties; 55

(3) A person using a handheld electronic wireless 56
communications device in that manner whose ~~motor~~ vehicle is in a 57
stationary position and who is outside a lane of travel; 58

(4) A person reading, selecting, or entering a name or 59
telephone number in a handheld electronic wireless 60
communications device for the purpose of making or receiving a 61
telephone call; 62

(5) A person receiving wireless messages on a device 63
regarding the operation or navigation of a ~~motor~~ vehicle; 64
safety-related information, including emergency, traffic, or 65
weather alerts; or data used primarily by the ~~motor~~ vehicle; 66

(6) A person receiving wireless messages via radio waves; 67

(7) A person using a device for navigation purposes; 68

(8) A person conducting wireless interpersonal 69
communication with a device that does not require manually 70
entering letters, numbers, or symbols or reading text messages, 71
except to activate, deactivate, or initiate the device or a 72
feature or function of the device; 73

(9) A person operating a commercial truck while using a 74
mobile data terminal that transmits and receives data; 75

(10) A person using a handheld electronic wireless 76

communications device in conjunction with a voice-operated or 77
hands-free device feature or function of the vehicle. 78

~~(C) Notwithstanding any provision of law to the contrary, 79
no law enforcement officer shall cause an operator of an 80
automobile being operated on any street or highway to stop the 81
automobile for the sole purpose of determining whether a 82
violation of division (A) of this section has been or is being 83
committed or for the sole purpose of issuing a ticket, citation, 84
or summons for a violation of that nature or causing the arrest 85
of or commencing a prosecution of a person for a violation of 86
that nature, and no law enforcement officer shall view the 87
interior or visually inspect any automobile being operated on 88
any street or highway for the sole purpose of determining 89
whether a violation of that nature has been or is being 90
committed. 91~~

~~(D) Whoever violates division (A) of this section is 92
guilty of a minor misdemeanor. 93~~

~~(E) (D) This section shall not be construed as 94
invalidating, preempting, or superseding a substantially 95
equivalent municipal ordinance that prescribes penalties for 96
violations of that ordinance that are greater than the penalties 97
prescribed in this section for violations of this section. 98~~

~~(F) (E) A prosecution for a violation of this section does 99
not preclude a prosecution for a violation of a substantially 100
equivalent municipal ordinance based on the same conduct. 101
However, if an offender is convicted of or pleads guilty to a 102
violation of this section and is also convicted of or pleads 103
guilty to a violation of a substantially equivalent municipal 104
ordinance based on the same conduct, the two offenses are allied 105
offenses of similar import under section 2941.25 of the Revised 106~~

Code.	107
(G) <u>(F)</u> As used in this section:	108
(1) "Electronic wireless communications device" includes	109
any of the following:	110
(a) A wireless telephone;	111
(b) A text-messaging device;	112
(c) A personal digital assistant;	113
(d) A computer, including a laptop computer and a computer tablet;	114 115
(e) Any other substantially similar wireless device that is designed or used to communicate text.	116 117
(2) "Voice-operated or hands-free device" means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate or deactivate a feature or function.	118 119 120 121
(3) "Write, send, or read a text-based communication" means to manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail.	122 123 124 125 126 127
Sec. 4511.205. (A) No holder of a temporary instruction permit who has not attained the age of eighteen years and no holder of a probationary driver's license shall drive a motor- vehicle on any street, highway, or property used by the public for purposes of vehicular traffic or parking while using in any manner an electronic wireless communications device.	128 129 130 131 132 133

(B) (1)–Division. No person shall use an electronic wireless 134
communications device in any manner while operating a vehicle in 135
either of the following circumstances: 136

(a) On any street or highway in a school zone as defined 137
in division (B) (1) (c) of section 4511.21 of the Revised Code 138
during school recess and while children are going to or leaving 139
school during the opening or closing hours; or 140

(b) In a construction zone as defined in division (C) of 141
section 5501.27 of the Revised Code during hours of actual work 142
within the construction zone. 143

Division (B) (1) of this section does not apply to the 144
holder of a temporary instruction permit who has not yet 145
attained eighteen years of age or the holder of a probationary 146
driver's license; such persons are subject to division (A) of 147
this section. 148

(2) The offense established under division (B) (1) of this 149
section is a strict liability offense and section 2901.20 of the 150
Revised Code does not apply. 151

(C) Divisions (A) and (B) of this section does do not 152
apply to either any of the following: 153

(1) A person using an electronic wireless communications 154
device for emergency purposes, including an emergency contact 155
with a law enforcement agency, hospital or health care provider, 156
fire department, or other similar emergency agency or entity; 157

(2) A person using an electronic wireless communications 158
device whose ~~motor~~-vehicle is in a stationary position and the 159
~~motor~~-vehicle is outside a lane of travel; 160

(3) A person using a navigation device in a voice-operated 161

or hands-free manner who does not manipulate the device while 162
driving. 163

~~(C)~~(D) (1) Except as provided in division ~~(C)~~(D) (2) of this 164
section, whoever violates division (A) of this section shall be 165
fined one hundred fifty dollars. In addition, the court shall 166
impose a class seven suspension of the offender's driver's 167
license or permit for a definite period of sixty days. 168

(2) If the person previously has been adjudicated a 169
delinquent child or a juvenile traffic offender for a violation 170
of division (A) of this section, whoever violates division (A) 171
of this section shall be fined three hundred dollars. In 172
addition, the court shall impose a class seven suspension of the 173
person's driver's license or permit for a definite period of one 174
year. 175

(3) Whoever violates division (B) of this section is 176
guilty of a minor misdemeanor. 177

~~(D)~~(E) (1) The filing of a sworn complaint against a 178
person for a violation of division (A) of this section does not 179
preclude the filing of a sworn complaint for a violation of a 180
substantially equivalent municipal ordinance for the same 181
conduct. However, if a person is adjudicated a delinquent child 182
or a juvenile traffic offender for a violation of division (A) 183
of this section and is also adjudicated a delinquent child or a 184
juvenile traffic offender for a violation of a substantially 185
equivalent municipal ordinance for the same conduct, the two 186
offenses are allied offenses of similar import under section 187
2941.25 of the Revised Code. 188

(2) A prosecution for a violation of division (B) of this 189
section does not preclude a prosecution for a violation of a 190

substantially equivalent municipal ordinance based on the same 191
conduct. However, if an offender is convicted of or pleads 192
guilty to a violation of division (B) of this section and is 193
also convicted of or pleads guilty to a violation of a 194
substantially equivalent municipal ordinance based on the same 195
conduct, the two offenses are allied offenses of similar import 196
under section 2941.25 of the Revised Code. 197

~~(E)~~-(F) As used in this section, "electronic wireless 198
communications device" includes any of the following: 199

- (1) A wireless telephone; 200
- (2) A personal digital assistant; 201
- (3) A computer, including a laptop computer and a computer 202
tablet; 203
- (4) A text-messaging device; 204
- (5) Any other substantially similar electronic wireless 205
device that is designed or used to communicate via voice, image, 206
or written word. 207

Section 2. That existing sections 4511.043, 4511.204, and 208
4511.205 of the Revised Code are hereby repealed. 209