

As Introduced

**129th General Assembly
Regular Session
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S. B. No. 35

Senator Tavares

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To amend sections 4510.01 and 4511.093 and to enact 1
section 4511.204 of the Revised Code to prohibit 2
driving a vehicle while using a handheld or 3
manually operated mobile communication device and 4
to establish the violation as a secondary traffic 5
offense. 6

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

Section 1. That sections 4510.01 and 4511.093 be amended and 7
section 4511.204 of the Revised Code be enacted to read as 8
follows: 9

Sec. 4510.01. As used in this title and in Title XXIX of the 10
Revised Code: 11

(A) "Cancel" or "cancellation" means the annulment or 12
termination by the bureau of motor vehicles of a driver's license, 13
commercial driver's license, temporary instruction permit, 14
probationary license, or nonresident operating privilege because 15
it was obtained unlawfully, issued in error, altered, or willfully 16
destroyed, or because the holder no longer is entitled to the 17
license, permit, or privilege. 18

(B) "Drug abuse offense," "cocaine," and "L.S.D." have the 19
same meanings as in section 2925.01 of the Revised Code. 20

(C) "Ignition interlock device" means a device approved by 21
the director of public safety that connects a breath analyzer to a 22
motor vehicle's ignition system, that is constantly available to 23
monitor the concentration by weight of alcohol in the breath of 24
any person attempting to start that motor vehicle by using its 25
ignition system, and that deters starting the motor vehicle by use 26
of its ignition system unless the person attempting to start the 27
vehicle provides an appropriate breath sample for the device and 28
the device determines that the concentration by weight of alcohol 29
in the person's breath is below a preset level. 30

(D) "Immobilizing or disabling device" means a device 31
approved by the director of public safety that may be ordered by a 32
court to be used by an offender as a condition of limited driving 33
privileges. "Immobilizing or disabling device" includes an 34
ignition interlock device, and any prototype device that is used 35
according to protocols designed to ensure efficient and effective 36
monitoring of limited driving privileges granted by a court to an 37
offender. 38

(E) "Moving violation" means any violation of any statute or 39
ordinance that regulates the operation of vehicles, streetcars, or 40
trackless trolleys on the highways or streets. "Moving violation" 41
does not include a violation of section 4511.204 or 4513.263 of 42
the Revised Code or a substantially equivalent municipal 43
ordinance, a violation of any statute or ordinance regulating 44
pedestrians or the parking of vehicles, vehicle size or load 45
limitations, vehicle fitness requirements, or vehicle 46
registration. 47

(F) "Municipal OVI ordinance" and "municipal OVI offense" 48
have the same meanings as in section 4511.181 of the Revised Code. 49

(G) "Prototype device" means any testing device to monitor 50
limited driving privileges that has not yet been approved or 51
disapproved by the director of public safety. 52

(H) "Suspend" or "suspension" means the permanent or temporary withdrawal, by action of a court or the bureau of motor vehicles, of a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for the period of the suspension or the permanent or temporary withdrawal of the privilege to obtain a license, permit, or privilege of that type for the period of the suspension.

(I) "Controlled substance" and "marihuana" have the same meanings as in section 3719.01 of the Revised Code.

Sec. 4511.093. (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 84
4513.263 of the Revised Code. 85

Sec. 4511.204. (A) No person shall drive a motor vehicle, 86
trackless trolley, or streetcar on any street, highway, or 87
property open to the public for vehicular traffic while using a 88
handheld or manually operated mobile communication device. 89

(B) Division (A) of this section does not apply to any of the 90
following: 91

(1) A person using a mobile communication device that is 92
specifically designed and configured to allow hands-free 93
operation, and is used in that manner while driving; 94

(2) A person using a mobile communication device for 95
emergency purposes, including an emergency call to a law 96
enforcement agency, hospital or health care provider, fire 97
department, or other similar emergency agency or entity; 98

(3) A person operating a public safety vehicle who uses a 99
mobile communication device in the course of the person's duties. 100

(C) Notwithstanding any provision of law to the contrary, no 101
law enforcement officer shall cause an operator of an automobile 102
being operated on any street or highway to stop the automobile for 103
the sole purpose of determining whether a violation of division 104
(A) of this section has been or is being committed or for the sole 105
purpose of issuing a ticket, citation, or summons for a violation 106
of that nature or causing the arrest of or commencing a 107
prosecution of a person for a violation of that nature, and no law 108
enforcement officer shall view the interior or visually inspect 109
any automobile being operated on any street or highway for the 110
sole purpose of determining whether a violation of that nature has 111
been or is being committed. 112

(D)(1) A violation of division (A) of this section shall not 113

be considered or used by the trier of fact in a tort action as 114
evidence of negligence or contributory negligence. But the trier 115
of fact may determine based on evidence admitted consistent with 116
the Ohio rules of evidence that the violation contributed to the 117
harm alleged in the tort action and may diminish a recovery of 118
compensatory damages that represents noneconomic loss, as defined 119
in section 2307.011 of the Revised Code, in a tort action that 120
could have been recovered but for the plaintiff's violation of 121
division (A) of this section. 122

(2) Evidence of a violation of division (A) of this section 123
shall not be used as a basis for a criminal prosecution of the 124
person other than a prosecution for a violation of this section 125
and shall not be admissible as evidence in a criminal action 126
involving the person other than a prosecution for a violation of 127
this section. 128

(E) Whoever violates division (A) of this section shall be 129
fined thirty dollars. 130

(F) As used in this section: 131

(1) "Mobile communication device" includes any of the 132
following: 133

(a) A wireless telephone; 134

(b) A text-messaging device; 135

(c) A personal digital assistant; 136

(d) A computer; 137

(e) Any other substantially similar wireless device that is 138
designed or used to communicate voice, text, or data. 139

(2) "Tort action" means a civil action for damages for 140
injury, death, or loss to person or property but does not include 141
a civil action for damages for breach of contract or another 142
agreement between persons. 143

Section 2. That existing sections 4510.01 and 4511.093 of the Revised Code are hereby repealed.

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