



ENACTMENT NEWS

House Bill 95 **Distracted Driving Penalty** Effective October 29, 2018

On July 30, 2018, the Governor signed into law House Bill 95, which creates an enhanced penalty for distracted driving.

Under the bill, if an offender commits a moving violation while “distracted” and that distraction was a contributing factor to the commission of the violation, the driver is subject to a fine of up to \$100, on top of any penalty imposed for the underlying moving violation.

Definition of “distracted” driving

The bill defines “distracted” as:

- (a) Using a handheld electronic wireless communications device, as defined in section 4511.204 of the Revised Code, except when utilizing any of the following:
 - (i) The device's speakerphone function;
 - (ii) A wireless technology standard for exchanging data over short distances;
 - (iii) A "voice-operated or hands-free" device that allows the person to use the electronic wireless communications device without the use of either hand except to activate, deactivate, or initiate a feature or function;
 - (iv) Any device that is physically or electronically integrated into the motor vehicle.
- (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.

The bill further provides that “distracted” does not include operating a motor vehicle while wearing an earphone or earplug over or in both ears at the same time, but that a person who does so may be charged with a violation of R.C. 4511.84. “Distracted” also 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.

Options following citation

Drivers have several options upon receiving a ticket, citation, or summons alleging the commission of a moving violation while distracted. The person may enter a written plea of guilty, paying all applicable fines including the \$100 fine for distracted driving, and waiving his or her right to contest the ticket. The driver may also elect, instead of paying the additional \$100 fine, to attend a distracted-driving safety course, to be established by the Department of Public Safety. Upon successful completion of the course, the driver will receive written evidence of such completion, to be submitted to the court along with payment for any other fines imposed, and will not be required to pay the additional \$100

fine. Finally, if the offender appears in person to contest the ticket, and is subsequently convicted, the court may impose an additional fine of not more than \$100 for the distracted activity. If the court imposes such a fine, the driver still may elect to complete the distracted-driving safety course in lieu of paying the fine. The court must notify the offender of this option when imposing the fine.

Allied offenses and *Linndale v. State*

Finally, the bill reenacts provisions of law pertaining to allied offenses that the 10th District Court of Appeals severed in *Linndale v. State* (2014-Ohio-4024) on single-subject-violation grounds. The bill provides that a prosecution for a texting-while-driving offense does not preclude prosecution for a substantially equivalent municipal ordinance based on the same conduct, but that the two are allied offenses of similar import under R.C. 2941.25. The bill also reinstates an identical provision pertaining to juveniles.

The bill passed the Ohio House of Representatives by a vote of 82-12 on June 21, 2017, and the Ohio Senate by a vote of 31-1 on June 27, 2018. It was signed into law on July 30, 2018 and becomes effective on October 29, 2018.