



Diana C. Fox

Bill Analysis
Legislative Service Commission

H.B. 315

125th General Assembly
(As Introduced)

Reps. Webster, Blasdel, Calvert, Carmichael, Clancy, Collier, Daniels, DeWine, C. Evans, D. Evans, Fessler, Flowers, Gibbs, Grendell, Hollister, Jolivette, Kearns, Latta, Martin, Niehaus, T. Patton, Raga, Reinhard, Schaffer, Schlichter, Schneider, Seaver, Setzer, J. Stewart, Trakas, Wagner, White, Wilson, Wolpert, Young

BILL SUMMARY

- Expands the offense of aggravated vehicular homicide to additionally prohibit a person from causing the death of another or the unlawful termination of another's pregnancy as a proximate result of operating a motor vehicle or motorcycle and being involved in an accident at a time when either (1) the person's driver's or commercial driver's license, permit or nonresident operating privilege is suspended or (2) the person has not been issued a valid license or permit.
- Expands the offense of aggravated vehicular assault to additionally prohibit a person from causing serious physical harm to another person or another's unborn as a proximate result of operating a motor vehicle or motorcycle and being involved in an accident at a time when either (1) the person's driver's or commercial driver's license, permit or nonresident operating privilege is suspended or (2) the person has not been issued a valid license or permit.
- Provides a "no actual knowledge" affirmative defense to a charge under these additional prohibitions based on a person's lack of actual knowledge that the person's license, permit, or operating privilege was subject to an administrative suspension.

CONTENT AND OPERATION

Aggravated vehicular homicide

Existing law

Existing law prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft from causing the death of another or the unlawful termination of another's pregnancy in one of the following ways: (1) as the proximate result of committing state OVI or a substantially equivalent municipal ordinance, (2) as the proximate result of committing state watercraft OVI in violation of R.C. 1547.11(A) or a substantially equivalent municipal ordinance, (3) as the proximate result of committing state aircraft OVI in violation of R.C. 4561.15(A)(3) or a substantially equivalent municipal ordinance, or (4) recklessly. A person who violates any of these prohibitions is guilty of aggravated vehicular homicide. (R.C. 2903.06(A)(1) and (2) and (B)(1); see **COMMENT 1**.)

Generally, aggravated vehicular homicide committed as the proximate result of committing state OVI, state watercraft OVI, or state aircraft OVI or substantially equivalent municipal ordinances is a felony of the second degree. But it is a felony of the first degree if, at the time of the offense, the offender was driving under a suspension or previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter; any traffic-related homicide, manslaughter, or assault offense; three or more prior violations of R.C. 4511.19 (state OVI and state OVUAC), R.C. 1547.11(A), R.C. 4561.15(A)(3) or substantially equivalent municipal ordinances within the previous six years; a combination of three or more prior violations of R.C. 4511.19, R.C. 1547.11(A), or R.C. 4561.15(A)(3); or a second or subsequent state OVI felony violation.¹ The court is required to impose a mandatory prison term on the offender. In addition to any other sanctions imposed, the court must impose a Class 1 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period for the life of the person subject to the suspension). (R.C. 2903.06(B)(2).)

¹ *Continuing law defines "traffic-related homicide, manslaughter, or assault offense" as involuntary manslaughter in certain OVI-related circumstances, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault, or the former versions of the offenses of aggravated vehicular homicide, vehicular homicide, or aggravated vehicular assault as they existed prior to March 23, 2000. (R.C. 2903.06(G)(1)(b) and 2903.08(F)(2).)*

Generally, aggravated vehicular homicide committed recklessly is a felony of the third degree. It is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension or previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or any traffic-related homicide, manslaughter, or assault offense. In addition to any other sanctions imposed, the court is required to impose upon the offender a Class 2 suspension of the offender's license, permit, or privilege (a definite period of three years to life). (R.C. 2903.06(B)(3).) The court must impose a mandatory prison term on the offender if either of the following applies (R.C. 2903.06(E)):

(1) The offender previously has been convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault.

(2) At the time of the offense, the offender was driving under suspension.

Operation of the bill

The bill additionally prohibits a person from causing the death of another or the unlawful termination of another's pregnancy as the proximate result of operating a motor vehicle or motorcycle and being involved in an accident at a time when the person's license, permit or privilege is under suspension or when the person has not been issued a valid license or permit. (R.C. 2903.06(A)(1)(d).)

A person who violates this new provision is guilty of aggravated vehicular homicide. The penalties for violating this new provision are the same as in existing law for aggravated vehicular homicide committed as a proximate result of committing state OVI, state watercraft OVI, or state aircraft OVI, except that as the offense is committed by a person driving under suspension, driving under a suspension does not elevate the offense to a felony of the first degree. (R.C. 2903.06(B)(2).)

Aggravated vehicular assault

Existing law

Existing law prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing serious physical harm to another person or another's unborn as a proximate result of committing (1) state OVI or a substantially equivalent municipal ordinance, (2) state watercraft OVI or a substantially equivalent municipal ordinance, or (3) state aircraft OVI or a substantially equivalent municipal ordinance. (R.C. 2903.08(A).)

A person who violates this prohibition is guilty of aggravated vehicular assault. Generally, aggravated vehicular assault is a felony of the third degree. However, aggravated vehicular assault is a felony of the second degree if, at the time of the offense, the offender (1) was driving under a suspension, or (2) previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, any traffic-related homicide, manslaughter, or assault offense, three or more prior violations of R.C. 4511.19 (state OVI and state OVUAC), R.C. 1547.11(A), R.C. 4561.15(A)(3) or substantially equivalent municipal ordinances within the previous six years, a combination of three or more prior violations of R.C. 4511.19, R.C. 1547.11(A), or R.C. 4561.15(A)(3), or a second or subsequent state OVI felony violation. In addition to any other sanctions imposed, the court must impose a Class 3 suspension of the offender's license, permit, or privilege (a definite period between 2 and 10 years). If the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, any traffic-related homicide, manslaughter, or assault offense, the court must impose a Class 2 suspension (a definite period of 3 years to life). (R.C. 2903.08(B); see **COMMENT 2**.)

Operation of the bill

The bill additionally prohibits a person, while operating or participating in the operation of a motor vehicle or motorcycle from causing serious physical harm to another or another's unborn as the proximate result of operating a motor vehicle or motorcycle and being involved in an accident at a time when the person's license, permit, or privilege is under suspension or when the person has not been issued a valid license or permit. (R.C. 2903.08(A)(1)(d).)

A person who violates this new prohibition is guilty of aggravated vehicular assault. The penalties for violating this new provision are the same as in existing law for aggravated vehicular assault, except that as the offense is committed by a person driving under suspension, driving under a suspension does not elevate the offense to a felony of the second degree. (R.C. 2903.08(B)(1).)

Affirmative defense to aggravated vehicular homicide and assault

The bill provides an affirmative defense to a person who is charged with committing either aggravated vehicular homicide or aggravated vehicular assault as a proximate result of operating a motor vehicle or motorcycle and being involved in an accident at a time when the person's license, permit, or privilege is under a suspension imposed by the Bureau of Motor Vehicles or an administrative agency of another state and the person did not have actual knowledge that the license, permit, or privilege was suspended. This affirmative defense is not available for a charge of aggravated vehicular homicide or aggravated vehicular

assault based on any other types of suspensions, such as court suspensions. (R.C. 2903.06(F) and 2903.08(E).)

COMMENT

1. Related to this provision, existing law, unchanged by the bill, also prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in either of the following ways: (a) negligently, or (b) as the proximate result of committing a violation of any provision in the Motor Vehicle Laws that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of those Laws that is a minor misdemeanor. A person who violates the prohibition set forth in clause (a) is guilty of vehicular homicide, which is a misdemeanor of the first degree or a felony of the fourth degree, depending upon the circumstances present, and a person who violates the prohibition set forth in clause (b) is guilty of vehicular manslaughter, which is a misdemeanor of the second degree or a misdemeanor of the first degree, depending upon the circumstances present. (R.C. 2903.06(A)(3), (A)(4), (B)(2), and (B)(3).)

2. Related to this, existing law, unchanged by the bill, also prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from recklessly causing serious physical harm to another person or another's unborn. A person who violates this prohibition is guilty of vehicular assault, which is a felony of the fourth or third degree, depending on circumstances. (R.C. 2903.08(A)(2) and (C).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-23-03	p. 1146

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