



H.B. 38

126th General Assembly
(As Introduced)

Reps. Schaffer, Fessler, Ujvagi, Allen

BILL SUMMARY

- Prohibits any person from *negligently* causing serious physical harm to another or another's unborn while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft and provides that a violation of this prohibition is the offense of negligent vehicular assault.
- Expands the definition of "equivalent offense" to include the offense of negligent vehicular assault.
- Adds a prior conviction of negligent vehicular assault to the circumstances limiting a court's ability to grant limited driving privileges in regard to a person whose license is administratively suspended as a result of being convicted of or pleading guilty to a violation of another state's laws or municipal ordinances that are substantially similar to state OVI or state OVUAC.
- Enhances the penalties for aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, and vehicular assault if the person previously has been convicted of or pleaded guilty to negligent vehicular assault.

CONTENT AND OPERATION

Negligent vehicular assault

Operation of the bill

The bill creates a new offense called negligent vehicular assault. The bill prohibits a person, while operating or participating in the operation of a motor

vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from negligently causing serious physical harm to another person or another's unborn.

A person who violates this new prohibition is guilty of negligent vehicular assault. Generally, negligent vehicular assault is a misdemeanor of the second degree. But, negligent vehicular assault is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension imposed under R.C. Chapter 4510. or any other provision of the Revised Code or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, or negligent vehicular assault, or any traffic-related homicide, manslaughter, or assault offense.¹ (R.C. 2903.08(A)(4) and (D).)

In addition to any other sanctions imposed, the court is required to impose upon the offender a Class Five suspension (a definite period of six months to three years) of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, negligent vehicular assault, or any traffic-related homicide, manslaughter, or assault offense, a Class Four suspension (a definite period of one to five years) of the offender's driver's license, commercial driver's license, or nonresident operating privilege. (R.C. 2903.08(D) and, by reference, R.C. 4510.02(A)(4) and (5).)

Also, under existing law, the penalties for aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, and vehicular assault are enhanced if the person previously has been convicted of or pleads guilty to a violation of R.C. 2903.08 (aggravated vehicular assault and vehicular assault). Under the bill, a prior conviction or plea of guilty to the new offense of negligent vehicular assault also enhances the penalties for these offenses (R.C. 2903.06(B)(2)(a)(iii), (B)(3), (C), (D), and (E)(1), not in the bill, and 2903.08(B)(1)(b), (B)(2), (C)(2), and (C)(3)). (See **"Background--overview of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter--prohibitions and penalties,"** below, for an overview of the vehicular homicide offenses.)

¹ *"Traffic-related homicide, manslaughter, or assault offense" means the offenses of involuntary manslaughter when certain OVI-related circumstances apply, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or violations of R.C. 2903.06, 2903.07, or 2903.08 as they existed prior to March 23, 2000. (R.C. 2903.08(G)(2) by reference to R.C. 2903.06(G)(1)(b)--not in the bill.)*

Existing law--offenses of aggravated vehicular assault and vehicular assault

Aggravated vehicular assault. Under existing law, a person commits the offense of aggravated vehicular assault if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, causes serious physical harm to another person or another's unborn as the proximate result of committing a violation of state OVI (R.C. 4511.19(A)) or of a substantially equivalent municipal ordinance, as the proximate result of committing state watercraft OVI (R.C. 1547.11(A)) or a substantially equivalent municipal ordinance, or as the proximate result of committing state aircraft OVI (R.C. 4561.15(A)(3)) or of a substantially equivalent municipal ordinance. Generally, aggravated vehicular assault is a felony of the third degree. But, aggravated vehicular assault is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault; any traffic-related homicide, manslaughter, or assault offense; three prior violations of state OVI, state watercraft OVI, state aircraft OVI, a substantially equivalent municipal ordinance, or any combination of those offenses within the previous six years; or a second or subsequent felony state OVI violation. The court is required to impose a mandatory prison term on the offender.

In addition to any other sanctions imposed, the court is required to impose upon the offender a Class Three suspension (definite period of two to ten years) of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege or, if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault or any traffic-related homicide, manslaughter, or assault offense, a Class Two suspension (a definite period of three years to life) of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. (R.C. 2903.08(A)(1), (B)(1), and (B)(2), and 4510.02(A)(2) and (3).)

Vehicular assault. Under existing law, a person is guilty of vehicular assault if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft does one of the following (R.C. 2903.08(A)(2) and (3)):

(1) Recklessly causes serious physical harm to another person or another's unborn;

(2) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless

operation offense, provided that the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone;

(3) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone.²

Generally, vehicular assault committed in violation of (1) or (2), above, is a felony of the fourth degree. But, vehicular assault committed in violation of (1) or (2), above, is a felony of the third degree if, at the time of the offense, the offender was driving under a suspension or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault, or any traffic-related homicide, manslaughter, or assault offense. Vehicular assault committed in violation of (3), above, is generally a misdemeanor of the first degree, but the offense is a felony of the fourth degree if at the time of the offense the offender was driving under a suspension or if the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault or vehicular assault, or any traffic-related homicide, manslaughter, or assault offense. The court is required to impose a mandatory prison term on the offender for a violation of (1) or (2), above, or a felony violation of (3), above, if either of the following applies: (1) the offender previously has been convicted of or pleaded guilty to aggravated vehicular assault, vehicular assault, aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter, or (2) at the time of the offense, the offender was driving under suspension under R.C. Chapter 4510. The court is required to impose a mandatory jail term of at least seven days on an offender who is convicted of or pleads guilty to a misdemeanor violation of (3), above.

In addition to any other sanctions imposed, the court must impose upon the offender a Class Four suspension (a definite period of one to five years) of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege or, if the offender previously has been convicted of or pleaded guilty to a violation of aggravated vehicular assault or vehicular assault or any traffic-related homicide, manslaughter, or assault offense, a Class Three suspension (definite period of two to ten years) of the offender's driver's license, commercial driver's license,

² *These construction zone offenses do not apply in a particular construction zone unless certain signs are erected in that construction zone (R.C. 2903.08(E)).*

temporary instruction permit, probationary license, or nonresident operating privilege. (R.C. 2903.08(A)(2) and (3), (C), (E)(2) and (3), and 4510.02(A)(3) and (4).)

Definition of "equivalent offense" in the OVI Law

Operation of the bill

The bill includes negligent vehicular assault in the definition of "equivalent offense" (R.C. 4511.181(A)(5)).

Existing law

Several provisions in the OVI Law and related provisions refer to offenses that are "equivalent offenses." Under the OVI Law, "equivalent offense" means any of the following (R.C. 4511.181(A)):

- (1) State OVI or state OVUAC;
- (2) A violation of a municipal OVI ordinance;
- (3) Involuntary manslaughter when certain OVI-related circumstances apply;
- (4) OVI-related aggravated vehicular homicide or aggravated vehicular assault or a municipal ordinance that is substantially equivalent to either of those divisions;
- (5) Recklessness-based aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, vehicular assault, or former R.C. 2903.07, or a municipal ordinance that is substantially equivalent to any of those offenses or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;
- (6) A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to state OVI or state OVUAC;
- (7) A violation of a former Ohio law that was substantially equivalent to state OVI or state OVUAC.

Provisions that use the term "equivalent offense"

The following provisions use the phrase "equivalent offense":

(1) In the offenses of OVI and OVUAC, the penalty is enhanced if the offender, within six years of the violation previously has pleaded guilty to or was convicted of an equivalent offense (R.C. 4511.19(G) and (H) and 4511.193(B)(1)(a)).

(2) The penalties and other sanctions under the Implied Consent Law are enhanced if the offender previously has been convicted of or pleaded guilty to an equivalent offense (R.C. 4511.191(C)(1) and 4511.193(B)(1)(a)).

(3) Certain provisions regarding the gathering and use of evidence of the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's system at the time of the alleged violation of OVI apply to persons charged with an equivalent offense (R.C. 4511.19(D) and (E)).

(4) The sanctions imposed for violating a municipal OVI ordinance are enhanced if the offender previously has been convicted of or pleaded guilty to an equivalent offense (R.C. 4511.193(B)(2)).

(5) In the offense of endangering children by committing state OVI when one or more children under 18 are in the vehicle, the court is prohibited from granting to the offender limited driving privileges if the offender, within the preceding six years, has been convicted of or pleaded guilty to three or more violations of one or endangering children by committing state OVI or an equivalent offense (R.C. 2919.22(G)(2)).

(6) Additional mandatory prison or jail terms are imposed on offenders when the indictment specifies one of the following (R.C. 2941.1413, 2941.1415, and 2941.1416):

(a) That an offender charged with state OVI within 20 years of the offense previously has been convicted of or pleaded guilty to five or more equivalent offenses;

(b) That an offender charged with aggravated vehicular homicide previously has been convicted of or pleaded guilty to three or more violations of state OVI, OVUAC, or equivalent offenses;

(c) That an offender charged with OVUAC within 20 years of the offense previously has been convicted of or pleaded guilty to five or more equivalent offenses.

Limited driving privileges for certain out of state OVI-related violations

Operation of the bill

The bill adds the offense of negligent vehicular assault to the list of offenses described in paragraph (1) under "Existing Law," below, thereby limiting a court's ability to grant limited driving privileges to a person who has been convicted of, pleads guilty to, or is adjudicated a delinquent child as a result of committing negligent vehicular assault within six years of the offense that gave rise to the suspension (R.C. 4510.17(E)(1)(e)).

Existing law

Existing law authorizes the registrar of motor vehicles to impose a Class D (six month) suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of any Ohio resident who is convicted of or pleads guilty to violating another state's laws or municipal ordinances that are substantially similar to state OVI or state OVUAC (a violation of R.C. 4511.19). Existing law contains a parallel provision for delinquent children. (R.C. 4510.17(B) and (D).)

Any person whose license or permit has been so suspended may file a petition in the appropriate court, agreeing to pay the cost of the proceedings and alleging that the suspension would seriously affect the person's ability to continue the person's employment. Upon satisfactory proof that there is reasonable cause to believe that the suspension would seriously affect the person's ability to continue the person's employment, the judge generally may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed. But, the judge is prohibited from granting limited driving privileges for employment as a driver of a commercial motor vehicle to any person who would be disqualified from operating a commercial motor vehicle if the violation had occurred in Ohio, or during any of the following periods of time (R.C. 4510.17(E)):

(1) The first 15 days of the suspension, if the person has not been convicted within six years of the date of the offense giving rise to the suspension of a violation of any of the following: (a) state OVI, state OVUAC, or a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, (b) a municipal ordinance relating to operating a motor vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, (c) involuntary manslaughter in a case in which the person was subject to sanctions that apply in certain OVI-related cases, (d) OVI-related aggravated vehicular homicide or aggravated vehicular assault or a municipal ordinance that is substantially similar to either of those offenses, or (e)

recklessness-based aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, vehicular assault, or a violation of R.C. 2903.07 as it existed prior to March 23, 2000, or a municipal ordinance that is substantially similar to any of those offenses or that former offense, in a case in which the jury or judge found that the person was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse.

(2) The first 30 days of the suspension, if the person has been convicted one time within six years of the date of the offense giving rise to the suspension of any violation identified in paragraph (1).

(3) The first 180 days of the suspension, if the person has been convicted two times within six years of the date of the offense giving rise to the suspension of any violation identified in paragraph (1).

(4) No limited driving privileges may be granted if the person has been convicted three or more times within five years of the date of the offense giving rise to the suspension of any violation identified in paragraph (1) of this section.

Background--overview of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter prohibitions and penalties

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 *as the proximate result of committing state OVI, state watercraft OVI, or state aircraft OVI, or of violating a substantially equivalent municipal ordinance*. A person who violates this prohibition is guilty of aggravated vehicular homicide and generally is guilty of 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 if the offender previously has been convicted of or pleaded guilty to a violation of R.C. 2903.06; any traffic-related homicide, manslaughter, or assault offense; three prior violations of state OVI, state watercraft OVI, or state aircraft OVI, state OVUAC, or a substantially equivalent municipal ordinance within the previous six years or a combination of three of these offenses in the previous six years; or a second or subsequent felony state OVI violation.

A person also is guilty of aggravated vehicular homicide if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, *recklessly* causes the death of another or the unlawful termination of another's pregnancy. Existing law also specifies that a person is guilty of aggravated vehicular homicide if the person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft causes the death of another or the

unlawful termination of another's pregnancy *as the proximate result of committing, while operating or participating in the operation of a motor vehicle in a construction zone, a reckless operation offense*. This provision only applies if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and if the applicable signs warning of this penalty are present in the construction zone. A violation of one of these prohibitions generally is a felony of the third degree, but it is a felony of the second degree if, at the time of the offense, the offender was driving under a suspension or if the offender previously has been convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense.

Existing law also prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from *negligently* causing the death of another or the unlawful termination of another's pregnancy or causing the death of another or the unlawful termination of another's pregnancy *as the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense*. However, this latter provision only applies if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and if the applicable signs warning of this penalty are present in the construction zone. A person who violates one of these prohibitions is guilty of vehicular homicide and generally is guilty of a misdemeanor of the first degree. A violation is a felony of the fourth degree if, at the time of the offense, the offender was driving under a suspension or revocation or if the offender previously has been convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense.

Finally, 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 *as the proximate result of committing a minor misdemeanor violation of the Traffic Code or of violating a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to a minor misdemeanor violation of the Traffic Code*. Whoever violates this prohibition is guilty of vehicular manslaughter and generally is guilty of a misdemeanor of the second degree. But, vehicular manslaughter is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a R.C. Chapter 4507. suspension or if the offender previously has been convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense. (R.C. 2903.06.)

"Traffic-related homicide, manslaughter, or assault offense" means involuntary manslaughter when the underlying violation is state OVI or OVUAC or a substantially similar municipal violation, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, vehicular assault, or a violation of former R.C. 2903.06, 2903.07, or 2903.08 (aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, and vehicular assault) (R.C. 2903.06(G)).

HISTORY

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