



## **S.B. 317**

126th General Assembly  
(As Introduced)

Sen. Cates

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### **BILL SUMMARY**

- Provides that a person's operation of a motor vehicle, motorcycle, snowmobile, or watercraft while simultaneously using a mobile telephone generally constitutes as a matter of law "recklessness" for purposes of the prohibitions against a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft: (1) causing the death of another or the unlawful termination of another's pregnancy "recklessly" (the offense of "aggravated vehicular homicide") or (2) causing serious physical harm to another person or another's unborn "recklessly" (the offense of "vehicular assault").
- Specifies that the provision described in the preceding dot point does not apply when a person is using a mobile telephone to report a hazardous, dangerous, or emergency situation to law enforcement or other specified authorities.

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### **CONTENT AND OPERATION**

#### **Introduction**

Existing law prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, watercraft, or aircraft, from causing the death of another, the "unlawful termination of another's pregnancy" (see **COMMENT**), serious physical harm to another person, or serious physical harm to "another's unborn" (see **COMMENT**), in any of a list of specified manners. One of the specified manners is if the person caused the death, unlawful termination, or harm *recklessly* (existing law, contained in R.C. 2901.22, defines when a person acts recklessly--see "*Culpable mental states*," below). If a person violates the prohibition by causing the death of another or the unlawful termination of another's pregnancy while operating one of the specified

conveyances *recklessly*, the violation is the offense of "aggravated vehicular homicide," and if the person violates the prohibition by causing serious physical harm to another person or another's unborn while operating one of the specified conveyances *recklessly*, the violation is the offense of "vehicular assault." The bill provides that a person's operation of a motor vehicle, motorcycle, snowmobile, or watercraft while simultaneously using a mobile telephone generally constitutes as a matter of law *recklessness* for purposes of the offenses of "aggravated vehicular homicide" and "vehicular assault."

### **Operation of the bill**

#### **Aggravated vehicular homicide based on recklessness**

The bill provides that, for purposes of the existing provision that prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy *recklessly* (one of several manners of committing the offense of "aggravated vehicular homicide" or the related offenses of "vehicular homicide" and "vehicular manslaughter"), except as described in the next sentence, a person's operation of a motor vehicle, motorcycle, snowmobile, or watercraft while simultaneously using a "mobile telephone" (see "**Mobile telephone definition**," below) constitutes as a matter of law the person's reckless operation of the motor vehicle, motorcycle, snowmobile, or watercraft. The provision described in the preceding sentence does not apply when a person is using a mobile telephone to report a situation that is hazardous to motor vehicle, motorcycle, snowmobile, or watercraft travel, a motor vehicle, motorcycle, snowmobile, or watercraft accident, an imminent threat of suffering death or serious physical harm to the person or another, or any other dangerous or emergency situation to law enforcement authorities or, if the situation, accident, or threat being reported occurred on or adjacent to a street or highway or on or adjacent to any Ohio waters, to officials of a government entity responsible for the street, highway, or waters. (R.C. 2903.06(G)(2).)

The bill does not otherwise modify any aspect of the offense of "aggravated vehicular homicide" or of the other related prohibitions and offenses that pertain to a person's causing the death of another, or the unlawful termination of another's pregnancy while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, watercraft, or aircraft and that are set forth in existing R.C. 2903.06 (see "**Existing law**," below, for a description of all of those prohibitions and offenses, and the related penalties, that are set forth in that section).

### **Vehicular assault based on recklessness**

The bill provides that, for purposes of the existing provision that 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 *recklessly* (one of several manners of committing the offense of "vehicular assault" or the related offense of "aggravated vehicular assault"), except as described in the next sentence, a person's operation of a motor vehicle, motorcycle, snowmobile, or watercraft while simultaneously using a "mobile telephone" (see "**Mobile telephone definition**," below) constitutes as a matter of law the person's reckless operation of the motor vehicle, motorcycle, snowmobile, or watercraft. The provision described in the preceding sentence does not apply when a person is using a mobile telephone to report a situation that is hazardous to motor vehicle, motorcycle, snowmobile, or watercraft travel, a motor vehicle, motorcycle, snowmobile, or watercraft accident, an imminent threat of suffering death or serious physical harm to the person or another, or any other dangerous or emergency situation to law enforcement authorities or, if the situation, accident, or threat being reported occurred on or adjacent to a street or highway or on or adjacent to any Ohio waters, to officials of a government entity responsible for the street, highway, or waters. (R.C. 2903.08(F)(2).)

The bill does not otherwise modify any aspect of the offense of "vehicular assault," or of the other related prohibitions and offenses that pertain to a person's causing serious physical harm to another person or another's unborn while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, watercraft, or aircraft and that are set forth in existing R.C. 2903.08 (see "**Existing law**," below, for a description of all of those prohibitions and offenses, and the related penalties, that are set forth in that section).

### **Mobile telephone definition**

As used in the provisions described above under "**Aggravated vehicular homicide based on recklessness**" and "**Vehicular assault based on recklessness**," "mobile telephone" includes any hand-held or hands-free cellular, analog, wireless, or digital telephone or a similar hand-held or hands-free communications device that is capable of sending or receiving two-way telephone communications without an access line for service. (R.C. 2903.06(G)(1)(f) and 2903.08(F)(1)(e).)

### **Existing law**

#### **Vehicular homicide offenses**

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" (see **COMMENT**) in any of a list of specified manners. The name of the offense associated with a violation of the prohibition, and the penalty for the violation, varies, depending upon the manner in which it was committed. The specified manners of causing a death or unlawful termination of another's pregnancy that are the bases of the prohibition, and the associated names of the offense and penalties, are as follows:

(1) The first specified manner of causing the death or unlawful termination while operating or participating in the operation of one of the specified conveyances is as the proximate result of committing a violation of: (a) R.C. 1547.11(A) or 4511.19(A), which set forth prohibitions related to operating a vehicle, streetcar, trackless trolley, vessel, water skis, an aquaplane, or a similar device while under the influence of alcohol, a drug of abuse, or a combination of them or with a prohibited concentration of alcohol in the person's system (R.C. 4511.19(A) is the offense of "state OVI"), (b) R.C. 4561.15(A)(3), which sets forth prohibitions related to operating an aircraft while under the influence of intoxicating liquor, controlled substances, or other habit-forming drugs, or (c) a municipal ordinance substantially equivalent to any of the provisions identified in clause (a) or (b). A violation of the prohibition committed in this specified manner is the offense of "aggravated vehicular homicide." Generally, the offense is a felony of the second degree, but it is a felony of the first degree if the offender was driving under a suspension imposed under any provision of the Revised Code, the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense, the offender previously was convicted of or pleaded guilty to three or more prior violations of R.C. 4511.19, 1547.11(A), 4561.15(A)(3), or a municipal ordinance substantially equivalent to any of those Revised Code provisions within the previous six years, the offender previously was convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in the preceding clause, or the offender previously was convicted of or pleaded guilty to a second or subsequent felony violation of R.C. 4511.19(A). The court must impose a mandatory prison term on the offender. In addition to any other sanctions imposed, the court must impose upon the offender a Class 1 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. (R.C. 2903.06(A)(1), (B)(1), (B)(2), and (E).)

(2) The second specified manner of causing the death or unlawful termination while operating or participating in the operation of one of the specified conveyances is either: (a) *recklessly* (see "*Culpable mental states*," below; this is the manner of committing the offense that is relevant to the "*Operation of the bill*," set forth above) or (b) 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 (the provision described in this clause applies

only if the person whose death is caused or whose pregnancy is terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the zone and does not apply unless warning signs are posted in a specified manner). A violation of the prohibition committed in this specified manner also is the offense of "aggravated vehicular homicide." Generally, the offense is a felony of the third degree, but it is a felony of the second degree if the offender was driving under a suspension imposed under any provision of the Revised Code or the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense. The court must impose a mandatory prison term on the offender if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or 2903.08 or if the offender was driving under suspension under any provision of the Revised Code. In addition to any other sanctions imposed, the court must impose upon the offender a Class 2 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. (R.C. 2903.06(A)(2), (B)(1), (B)(3), and (E).)

(3) The third specified manner of causing the death or unlawful termination while operating or participating in the operation of one of the specified conveyances is either: (a) *negligently* (see "*Culpable mental states*," below) or (b) 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 (the provision described in this clause applies only if the person whose death is caused or whose pregnancy is terminated is in the construction zone at the time of the offender's commission of the speeding offense in the zone and does not apply unless warning signs are posted in a specified manner). A violation of the prohibition committed in this specified manner is the offense of "vehicular homicide." Generally, the offense is a misdemeanor of the first degree, but it is a felony of the fourth degree if the offender was driving under a suspension imposed under any provision of the Revised Code or the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense. The court must impose a mandatory jail term of at least 15 days on an offender for a misdemeanor violation committed in the manner described in clause (b) of the first sentence of this paragraph and may impose upon the offender a longer authorized jail term. The court must impose a mandatory prison term on the offender for a violation committed in the manner described in clause (a) or for a felony violation committed in the manner described in clause (b) if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or 2903.08 or if the offender was driving under suspension under any provision of the Revised Code. In addition to any other sanctions imposed, the court must impose upon the offender a Class 4 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege or, if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter,

or assault offense, a Class 3 suspension of the offender's license, permit, or privilege. (R.C. 2903.06(A)(3), (C), and (E).)

(4) The fourth specified manner of causing the death or unlawful termination while operating or participating in the operation of one of the specified conveyances is as the proximate result of committing a violation of any provision of any section contained in R.C. Title XLV 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 any section contained in R.C. Title XLV that is a minor misdemeanor. A violation of the prohibition committed in this specified manner is the offense of "vehicular manslaughter." Generally, the offense is a misdemeanor of the second degree, but it is a misdemeanor of the first degree if the offender was driving under a suspension imposed under any provision of the Revised Code or the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense. In addition to any other sanctions imposed, the court must impose upon the offender a Class 6 suspension of the offender's driver's license or commercial driver's license or permit or nonresident operating privilege or, if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense, a Class 4 suspension of the license, permit, or privilege. (R.C. 2903.06(A)(3) and (D).)

#### **Vehicular assault offenses**

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" (see **COMMENT**) in any of a list of specified manners. The name of the offense associated with a violation of the prohibition, and the penalty for the violation, varies, depending upon the manner in which it was committed. The specified manners of causing serious physical harm to another person or another's unborn that are the bases of the prohibition, and the associated names of the offense and penalties, are as follows:

(1) The first specified manner of causing the serious physical harm while operating or participating in the operation of one of the specified conveyances is as the proximate result of committing a violation of: (a) R.C. 1547.11(A) or 4511.19(A), which set forth prohibitions related to operating a vehicle, streetcar, trackless trolley, vessel, water skis, an aquaplane, or a similar device while under the influence of alcohol, a drug of abuse, or a combination of them or with a prohibited concentration of alcohol in the person's system (R.C. 4511.19(A) is the offense of "state OVI"), (b) R.C. 4561.15(A)(3), which sets forth prohibitions related to operating an aircraft while under the influence of intoxicating liquor,

controlled substances, or other habit-forming drugs, or (c) a municipal ordinance substantially equivalent to any of the provisions identified in clause (a) or (b). A violation of the prohibition committed in this specified manner is the offense of "aggravated vehicular assault." Generally, the offense is a felony of the third degree, but it is a felony of the second degree if the offender was driving under a suspension imposed under any provision of the Revised Code, the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.08 or any traffic-related homicide, manslaughter, or assault offense, the offender previously was convicted of or pleaded guilty to three or more prior violations of R.C. 4511.19, 1547.11(A), 4561.15(A)(3), or a municipal ordinance substantially equivalent to any of those Revised Code provisions within the previous six years, the offender previously was convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in the preceding clause, or the offender previously was convicted of or pleaded guilty to a second or subsequent felony violation of R.C. 4511.19(A). The court must impose a mandatory prison term on the offender. In addition to any other sanctions imposed, the court must impose upon the offender a Class 3 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege or, if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.08 or any traffic-related homicide, manslaughter, or assault offense, a Class 2 suspension of the license, permit, or privilege. (R.C. 2903.08(A)(1), (B)(1), (B)(2), and (D)(1).)

(2) The second specified manner of causing the serious physical harm while operating or participating in the operation of one of the specified conveyances is either: (a) *recklessly* (see "***Culpable mental states***," below; this is the manner of committing the offense that is relevant to the "***Operation of the bill***," set forth above) or (b) 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 (the provision described in this clause applies only if the person to whom the serious physical harm is caused or to whose unborn it is caused is in the construction zone at the time of the offender's commission of the reckless operation offense in the zone and does not apply unless warning signs are posted in a specified manner). A violation of the prohibition committed in this specified manner is the offense of "vehicular assault." Generally, the offense is a felony of the fourth degree, but it is a felony of the second degree if the offender was driving under a suspension imposed under any provision of the Revised Code, the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.08 or any traffic-related homicide, manslaughter, or assault offense, or the offender, in the same course of conduct resulting in the violation, also violated R.C. 4549.02, 4549.021, or 4549.03. The court must impose a mandatory prison term on the offender if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or 2903.08 or if the offender was driving under suspension under any provision of the Revised Code. In addition to any other

sanctions imposed, the court must impose upon the offender a Class 4 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege or, if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.08 or any traffic-related homicide, manslaughter, or assault offense, a Class 3 suspension of the license, permit, or privilege. (R.C. 2903.08(A)(2), (C)(1), (C)(2), and (D)(2).)

(3) The third specified manner of causing the serious physical harm while operating or participating in the operation of one of the specified conveyances is 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 (the provision described in this clause applies only if the person to whom the serious physical harm is caused or to whose unborn it is caused is in the construction zone at the time of the offender's commission of the speeding offense in the zone and does not apply unless warning signs are posted in a specified manner). A violation of the prohibition committed in this specified manner also is the offense of "vehicular assault." Generally, the offense is a misdemeanor of the first degree, but it is a felony of the fourth degree if the offender was driving under a suspension imposed under any provision of the Revised Code or the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.08 or any traffic-related homicide, manslaughter, or assault offense. The court must impose a mandatory jail term of at least seven days on an offender for a misdemeanor violation and may impose upon the offender a longer authorized jail term. The court must impose a mandatory prison term on the offender for a felony violation if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or 2903.08 or if the offender was driving under suspension under any provision of the Revised Code. In addition to any other sanctions imposed, the court must impose upon the offender a Class 4 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege or, if the offender previously was convicted of or pleaded guilty to a violation of R.C. 2903.06 or any traffic-related homicide, manslaughter, or assault offense, a Class 3 suspension of the license, permit, or privilege. (R.C. 2903.08(A)(3), (C)(1), (C)(3), (D)(2), and (D)(3).)

### **Culpable mental states**

Existing R.C. 2901.22, not in the bill, sets forth the "culpable mental states" that are used in Ohio's Criminal Law. It specifies that:

(1) A person acts *purposely* when it is his or her specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his or her specific intention to engage in conduct of that nature.

(2) A person acts *knowingly*, regardless of his or her purpose, when he or she is aware that his or her conduct will probably cause a certain result or will probably be of a certain nature. A person has *knowledge* of circumstances when he or she is aware that such circumstances probably exist.

(3) A person acts *recklessly* when, with heedless indifference to the consequences, he or she perversely disregards a known risk that his or her conduct is likely to cause a certain result or is likely to be of a certain nature. A person is *reckless* with respect to circumstances when, with heedless indifference to the consequences, he or she perversely disregards a known risk that such circumstances are likely to exist.

(4) A person acts *negligently* when, because of a substantial lapse from due care, he or she fails to perceive or avoid a risk that his or her conduct may cause a certain result or may be of a certain nature. A person is *negligent* with respect to circumstances when, because of a substantial lapse from due care, he or she fails to perceive or avoid a risk that such circumstances may exist.

(5) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element.

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## COMMENT

Existing R.C. 2903.09, not in the bill, provides that, as used in R.C. 2903.01 to 2903.08, 2903.11 to 2903.14, 2903.21, and 2903.22:

(1) "Unlawful termination of another's pregnancy" means causing the death of an unborn member of the species *homo sapiens*, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs.

(2) "Another's unborn" or "such other person's unborn" means a member of the species *homo sapiens*, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs.

(3) Notwithstanding paragraphs (1) and (2), above, in no case may the definitions of the terms "unlawful termination of another's pregnancy," "another's unborn," and "such other person's unborn" that are set forth in those paragraphs be applied or construed in any of the following manners:

(a) Except as otherwise described in this paragraph, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the actual consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate R.C. 2919.12, 2919.13(B), 2919.151, 2919.17, or 2919.18, may be punished as a violation of that prohibition, as applicable.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following: (i) her delivery of a stillborn baby, (ii) her causing, in any other manner, the death *in utero* of an unborn that she is carrying, (iii) her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is an unborn, (iv) her causing her child who is born alive to sustain one or more injuries while the child is an unborn, or (v) her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to an unborn that she is carrying.

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## HISTORY

ACTION	DATE
Introduced	04-27-06

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