

Legislative Analysis



HOLDING OR USING MOBILE DEVICES WHILE DRIVING

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<http://www.house.mi.gov/hfa>

House Bill 4250 as enrolled
Sponsor: Rep. Matt Koleszar

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4251 as enrolled
Sponsor: Rep. Tyrone Carter

House Bill 4252 as enrolled
Sponsor: Rep. Mike Mueller

(Enacted as Public Acts 39, 40, and 41 of 2023)

House Committee: Transportation, Mobility and Infrastructure
Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 5-17-23

SUMMARY:

House Bills 4250, 4251, and 4252 would amend the Michigan Vehicle Code to prohibit, with some exceptions, holding or using a cell phone or other mobile device while operating a motor vehicle, beginning June 30, 2023. This prohibition would replace provisions that now prohibit texting while driving and, for specific types of drivers, making or taking phone calls in certain circumstances. The new prohibition would generally prohibit holding a device or using it for any reason, including among other things texts, calls, videos, and engaging with social network sites. The bills would provide exceptions for specific cases such as hands-free or emergency use. Violations could result in a civil fine, community service, a driver improvement course, or points on the driver's driving record, depending in part on circumstances such as repeat violations. However, none of these prohibitions would apply five years after the date House Bill 4250 is enacted.¹

House Bill 4250 would amend section 602b to generally prohibit holding or using a mobile electronic device while operating a motor vehicle on a public roadway; provide exceptions to that prohibition; and prescribe sanctions for a violation.

Current law

Section 602b now prohibits a person from using a wireless two-way communication device² in their hand or on their lap to read, manually type, or send a text message while operating a motor vehicle *that is moving* on a highway or street. The same prohibition applies to a person operating a commercial motor vehicle or school bus on a highway or street, except that those vehicles do not have to be moving for a violation to occur. Section 602b also prohibits a person operating a commercial motor vehicle or school bus on a highway from using a hand-held mobile telephone for voice communication, unless the vehicle or bus has been moved off or to the side of the highway and has stopped in a place where it is safe to remain stopped.³ A person who violates these provisions is responsible for a civil infraction and must pay a \$100 fine for a first violation and a \$200 fine for any subsequent one.

¹ Except for the prohibition on cell phone use by teen drivers with a level 1 or 2 license (see House Bill 4252).

² This includes a cell phone, but does not include an on-demand automated motor vehicle network.

³ These provisions mirror regulations that have been in effect at the federal level since 2010 for [texting](#) and since 2012 for [hand-held mobile telephones](#).

However, the above prohibitions do not apply if the person is using the device to report a traffic accident, medical emergency, serious road hazard, or situation they think puts their safety at risk or to report or prevent a crime. The prohibitions also do not apply to a police officer, law enforcement official, member of a fire department, or operator of an emergency vehicle while carrying out their official duties or to a person operating or programming the operation of an automated motor vehicle while testing or operating it without a human operator.

Prohibition, exceptions, and sanctions under the bill

The bill instead would prohibit an individual from *holding* or *using a mobile electronic device* while *operating* a motor vehicle. (Under the code, a motor vehicle means any vehicle that is self-propelled, with some exceptions, such as for industrial equipment, mobility devices, and electric bicycles and skateboards.)

Use a mobile electronic device would mean to perform any task with the device, including any of the following:

- Sending or receiving a telephone call.
- Sending, receiving, or reading a text message.
- Viewing, recording, or transmitting a video.
- Accessing, reading, or posting to a *social networking site*.

For operators of a commercial vehicle or school bus only, *use a mobile electronic device* would additionally include reaching for a mobile electronic device in a way that causes the driver to move out of a seated driving position in which they are restrained by a seat belt that is properly installed and adjusted as described in the bill.⁴

Mobile electronic device would mean an electronic device that is not permanently installed in a motor vehicle. At the least, it would include devices capable of text messaging, voice communication, entertainment, navigation, accessing the internet, or producing email. However, it would not include either of the following:

- A CB or ham radio (one designed for the Citizens Band Service⁵ or the Amateur Radio Service⁶ of the Federal Communications Commission) or a commercial two-way radio communications device or equipment permanently installed in a motor vehicle.
- A medical device that is designed to be worn, such as an insulin pump.

Operate would mean to drive or assume physical control of a motor vehicle on a public way, street, road, or highway. This would include times when the vehicle is not moving temporarily because of traffic, road conditions, or a traffic light or stop sign, but it would not apply to a vehicle that is legally parked.

Social networking site would mean any web-based service that allows individuals to construct a profile within a founded system and communicate with other users of the site for social or amusement purposes.

Hold would mean to physically support with any part of the hands, arms, or shoulders.

⁴ This applies to these drivers under current state law and is part of federal regulations regarding hand-held device use by holders of commercial driver's licenses (see footnote 3).

⁵ <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/citizens-band-radio-service-cbrs>

⁶ <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/amateur-radio-service>

The above prohibition would *not* apply to any of the following:

- Using a device for emergency purposes, including calling or texting a 9-1-1 system or making an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services entity to report any of the following to the appropriate authorities:
 - A medical emergency, traffic accident, serious road hazard, fire, or hazardous materials emergency.
 - Someone driving in a reckless or unsafe manner or who appears to be driving under the influence of alcohol or drugs.
 - A crime being committed.
- Using a device's global positioning system (GPS) or navigation feature as long as information is not entered by hand.
- Using a device in a voice-operated or hands-free mode as long as the driver does not use their hands to operate it beyond either of the following:
 - Using a single button press, tap, or swipe to activate or deactivate a function of the device or to select a name or phone number.
 - Using the permanently installed user interfaces of a device that is integrated into the motor vehicle.
- Using a device used solely to continuously record or broadcast video inside or outside of the motor vehicle.
- The use of a device by a law enforcement officer, firefighter, paramedic, emergency medical technician, operator of an authorized emergency vehicle, or similarly engaged paid or volunteer public safety first responder while carrying out their official duties.
- Using a device that is placed in a mount and used in a manner already exempted above.
- The use of a device by a public utility employee or contractor acting within the scope of their employment when responding to a public utility emergency.
- Any of the following related to automated driving systems:
 - A level 3, 4, or 5 automated driving system, as described in "J3016: Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles," April 2021 edition, published by SAE International,⁷ or an automated vehicle equipped with such an automated driving system, during testing or operation with the automated driving system engaged.
 - Viewing or using, in a hands-free manner, a device mounted in a vehicle for displaying information related to testing or operating an automated driving system or automated technology.
 - Operating, or programming the operation of, an automated motor vehicle while testing or operating it without a human operator while the automated driving system is engaged.

An individual who violates the above prohibition while operating a vehicle *other than* a school bus or commercial vehicle would be responsible for a civil infraction and would have to be ordered to do the following:

- For a first violation, pay a \$100 civil fine or perform 16 hours of community service, or both.
- For a subsequent violation, pay a \$250 civil fine or perform 24 hours of community service, or both.

⁷ See https://www.sae.org/binaries/content/assets/cm/content/blog/sae-j3016-visual-chart_5.3.21.pdf

An individual who violates the above prohibition while operating a school bus or commercial vehicle would be responsible for a civil infraction and would have to be ordered to do the following:

- For a first violation, pay a \$200 civil fine or perform 32 hours of community service, or both.
- For a subsequent violation, pay a \$500 civil fine or perform 48 hours of community service, or both.

A civil fine ordered in either case described above would have to be doubled if, while violating the above prohibition, the individual was involved in an accident where they were at fault.

A court would have to order an individual responsible for three or more civil infractions under the bill within a three-year period (but only those involving a vehicle *other than* a school bus or commercial vehicle) to complete a basic driver improvement course within a reasonable time as determined by the court.

Enforcement and applicability

A police officer enforcing the above prohibition could treat a violation as the primary or sole reason for issuing a citation to a driver. However, a police officer could not search a motor vehicle, the driver, or a passenger solely because of that violation.

Finally, the bill provides that all of the provisions described above will no longer apply five years after the bill's effective date.⁸

MCL 257.602b

House Bill 4251 would make related changes regarding commercial motor vehicles, driving record points, and driver improvement courses.

Commercial motor vehicles (serious traffic violations)

Currently, a violation of section 602b(2) or (3), the provisions that address device use by the operator of a commercial motor vehicle or school bus, is defined as a *serious traffic violation* for purposes of section 319b of the code, which pertains to commercial motor vehicles. The bill would instead define a violation of House Bill 4250 that involves a school bus or commercial motor vehicle as a *serious traffic violation* for those purposes.

Among other things, section 319b requires the secretary of state to immediately suspend or revoke all commercial learners permits or vehicle group designations on the driver's license of a person who is convicted of or found responsible for multiple *serious traffic violations* while operating a commercial motor vehicle, as follows:

- For two *serious traffic violations* arising from separate incidents within three years, the suspension is for 60 days.
- For three *serious traffic violations* arising from separate incidents within three years, the suspension is for 120 days, to be served consecutively to any 60-day suspension imposed as above.

⁸ A note in a previous summary of these bills said that, in this case, the state would be out of compliance with federal law with regard to required commercial driver license (CDL) sanctions for *serious traffic violations*. That note was incorrect. It appears that the state would be in compliance as long as it could impose CDL sanctions as required for *serious traffic violations* involving the relevant laws of other states.

Driving record points

Under current law, points cannot be assessed against a driver's driving record for a violation of section 602b(1), the provision that now prohibits texting by the operator of a motor vehicle other than a commercial vehicle or a school bus. The bill would remove this provision and instead require one point to be entered for a second violation of section 602b (that is, House Bill 4250) and two points for a third or subsequent violation.

Basic driver improvement course

Section 320d of the code now provides that drivers who commit a moving violation can be eligible⁹ to take a basic driver improvement course¹⁰ if they are not ruled out by specified criteria (such as the gravity of the violation and whether there are repeat violations or existing license restrictions). The secretary of state must make the course available to eligible drivers. If the driver successfully completes the course, the secretary of state is prohibited from entering points on the driver's driving record or making information about the moving violation available to insurance companies.

The bill would add that the above provisions do not apply to an individual who is not being offered the basic driver improvement course based on the eligibility criteria, but has instead been ordered by a court to complete the course (i.e., under House Bill 4250). The secretary of state would have to enter the driving record points for a driver who completes a court-ordered basic driver education course but would otherwise *not* be eligible for it under the eligibility criteria that apply to the course when not ordered by a court.

Finally, the bill would remove references to some sections of law that have been repealed.

MCL 257.319b, 257.320a, and 257.320d

House Bill 4252 would amend section 602c, which generally prohibits an individual with a level 1 or 2 graduated license¹¹ from using a cell phone to initiate or answer a call or to listen or communicate verbally through the phone while operating a vehicle on a highway or street. The bill would retain this provision, but would add language stating that it is in addition to the requirements of section 602b (House Bill 4250).¹² This provision would not apply to an individual who is using a cell phone to report a traffic accident, medical emergency, serious road hazard, or situation they think puts their safety at risk or to report or prevent a crime. A person who violates section 602c is responsible for a civil infraction and must pay a civil fine in an amount of up to \$100.

⁹ See https://www.michigan.gov/sos/-/media/Project/Websites/sos/06lawensn/BDIC_Civil_infractions_eligible.pdf

¹⁰ <https://www.michigan.gov/sos/faqs/license-and-id/basic-driver-improvement-course>

¹¹ Typically, but not always, these drivers are 14 to 16 years old. Michigan has a 3-tier driver licensing process that requires new drivers to gain experience before earning full licensure. Level 1 and 2 graduated licenses are restricted licenses issued in conjunction with driver education courses, the accumulation of behind-the-wheel experience, and related testing and other requirements. The minimum age for a level 1 learner's license is 14 years and eight months; the minimum age for a level 2 intermediate license is 16; and the minimum age for a level 3 license is 17. See <https://www.michigan.gov/sos/-/media/Project/Websites/sos/04lehman/Michigan-GDL-and-DE-Requirements.pdf> and <https://www.michigan.gov/sos/license-id/new-drivers>.

¹² **Note:** Since this prohibition appears to be wholly included in section 602b, it seems potentially unclear what part of it is "additional" to those requirements. It could also be unclear whether other exceptions described in section 602b (e.g., reporting a fire or a hazardous materials emergency) might also apply to these drivers, or whether any sanctions in section 602b could apply to violations of section 602c.

Driving record

An abstract for a conviction or civil infraction determination for a violation of section 602b(1) or 602c currently must not be forwarded to the secretary of state by a court or entered on a driver's master driving record. The bill would eliminate this provision.¹³ (Section 602b(1) is the provision that, now and under the bill, prohibits texting by the operator of a motor vehicle other than a commercial vehicle or a school bus.)

Civil fines

The bill would amend section 907 to implement the assessment of civil fines for a violation of section 602b as provided in House Bill 4250.

Report

Three and a half years after the bill's effective date, the Department of State Police (MSP) would have to submit a report to the Senate Majority Leader, the Speaker of the House, and the governor that includes the following information, based on available data:

- The number of citations given for violations of sections 602b and 602c.
- The race and ethnicity of the individuals given those citations.
- The number of vehicle crashes, serious injuries, and deaths caused by those violations.

MCL 257.602c, 257.732, and 257.907

Effectiveness

The bills would go into effect June 30, 2023. All three bills would have to be enacted before any of them could go into effect.

BACKGROUND:

According to the National Highway Traffic Safety Administration (NHTSA), 3,522 people died in crashes involving distracted driving in the United States in 2021.¹⁴ That represents a 12.0% increase over the 3,142 people who were killed by distracted driving in 2020,¹⁵ when fewer people were on the roads due the COVID-19 pandemic, and an 8.7% increase over the 3,240 average annual number of deaths during the ten years from 2011 to 2020.¹⁶ Nationally, in 2021, 8% of fatal crashes involved distracted drivers.¹⁷ In Michigan, 5.9% of all crashes in

¹³ **Note:** This change seems to imply that an abstract for a violation of section 602c would have to be forwarded to the secretary of state for entry on the driver's driving record. However, section 320a, as amended by House Bill 4251, would still prohibit points from being entered on a driving record for a violation of section 602c.

¹⁴ <https://www.nhtsa.gov/risky-driving/distracted-driving>

¹⁵ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813309>

¹⁶ https://www.michigan.gov/msp/-/media/Project/Websites/msp/ohsp/1_March-2023/Distracted-Driving-Enforcement-Fact-Sheet.pdf

¹⁷ The National Safety Council advises that distracted-driving crashes are underreported, and the NHTSA notes: "Many variables on the police crash report [PCR] are nearly universal, but distraction is not one of those variables. Some PCRs identify distraction as a distinct reporting field while others do not have such a field and identification of distraction is based upon the narrative portion of the report." <https://www.nsc.org/getmedia/2c2361f9-c513-4d79-8143-0eaa38048f64/report-understanding-driver-distraction0920.pdf.aspx>

With regard to Michigan, according to the University of Michigan's Traffic Research Institute: "Prior to 2016, Michigan crash data included one variable to indicate whether the driver was distracted and another to indicate whether the driver was using a cell phone. In 2016, a new variable was added to show whether the driver was distracted and to specify the type of distraction for those drivers who were distracted... , thus replacing the previous distracted driving

2021 were reported to have involved a distracted driver. Of the 16,543 distracted-driving crashes reported in Michigan that year, 59 resulted in a death.¹⁸ In addition, researchers at the University of Michigan’s Traffic Research Institute (UMTRI) have found that crashes that involve a distracted driver tend to be more severe than those that do not.¹⁹

The NHTSA defines driver distraction as “a specific type of inattention that occurs when drivers divert their attention away from the driving task to focus on another activity instead,” which could include such things as texting, talking on the phone, eating, drinking, grooming, interacting with passengers, adjusting the A/C, or looking for a better song on the radio.²⁰ The NHTSA identifies three main categories of distraction:

- Visual (eye) distractions require the driver to take their eyes off the road.
- Manual (hand) distractions require the driver to do something with their hand or hands.
- Cognitive (brain) distractions involve thinking about something other than the driving.

These categories can overlap. For example, talking on the phone using a hands-free headset is a cognitive distraction, while the same conversation on a handheld phone is both a cognitive distraction and a manual one. Texting involves all three types of distraction. The same goes for using a handheld phone to engage in any number of other tasks, ranging from finding or entering a phone number to engaging with apps for web browsing, video streaming, or social media. In all of these cases, for varying lengths of time, a driver’s eyes, hands, *and* brain are not engaged in actually driving the car. (For perspective on the time element, a car going 60 miles an hour travels 440 feet in five seconds—about one and a half football fields.)

At least 25 states now have a general prohibition against hand-held cell phone use that is similar to the one proposed by the bills. In addition, 48 states now prohibit all drivers from texting while driving (as Michigan has since 2010), and 44 states now generally prohibit cell phone use by new drivers or teenage drivers (as Michigan has since 2013).²¹

The bills are similar in varying degrees to HBs 4277, 4278, and 4279 of last session, which were passed by the House; HBs 4181, 4198, and 4199 of the 2019-20 session, also passed by the House; and HB 4466 of the 2017-18 session.

BRIEF DISCUSSION:

Supporters of the bills argue that they will save lives. They note that the combination and duration of distractions (visual, manual, and cognitive) that are involved in making or

variables. With this coding change, the number of distracted-driving crashes rose from about 4,000-5,000 a year to nearly 13,000 in 2016.” Even so, the institute says, “Distracted driving is often underreported, as it is difficult to determine driver behaviors and actions at the time of the crash unless they are reported by involved parties or witnesses.” https://publications.michigantrafficcrashfacts.org/2019/Distracted_Driving_2019_final_draft.pdf

¹⁸ https://www.michigantrafficcrashfacts.org/doc/gtsac/driver_distraction

¹⁹ https://www.michigantrafficcrashfacts.org/doc/gtsac/distracted_driving_report

²⁰ <https://www.nhtsa.gov/sites/nhtsa.gov/files/811299.pdf>

²¹ The states with a general hand-held ban are Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Tennessee, Vermont, Virginia, Washington, and West Virginia. Five other states (Arkansas, Florida, Louisiana, Texas, and Wisconsin) have such a ban in school or work zones. See <https://app.powerbi.com/view?r=eyJrIjoiMDBhNDNkZjQtMDg2OS00YzZkLWJhZWYtYzY1MTRlZGIxZTI4IiwidCI6IjM4MmZiOGIwLTRkYzYtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIslmMiOjZ9&pageName=ReportSection>

conducting phone conversations on hand-held devices make those activities too dangerous to allow drivers to engage in while driving—let alone the range of other activities that are now available on phones and other devices with distraction levels that are even higher (and take longer) than phone calls. These activities are not just risks that drivers are taking upon themselves, but often deadly threats to others who are simply going about their lives before being hit by a car that basically no one is driving. While the state’s current law is intended to curb texting in general and cell phone use by certain drivers, many believe that it is hard to enforce precisely because it only applies to those specific activities or specific kinds of drivers. That is, it’s not enough for a police officer to see a phone in a driver’s hand, they have to try to determine what exactly the driver is doing with it—a judgment the driver can always contest.

Some critics of the bills argue that they will provide an expanded set of circumstances under which police can choose to make (or not to make) a traffic stop and, in the absence of explicit training or legal safeguards to address racial profiling and other enforcement disparities, will likely have a disproportionate, and negative, impact on minority and low-income communities.

Others oppose the bills because they feel that they are unnecessary and that current laws against device use and reckless driving are sufficient to address the problem of distracted driving.

FISCAL IMPACT:

House Bills 4250, 4251, and 4252 would have an indeterminate fiscal impact on the state and on local units of government that would depend on the number of individuals ordered to pay a civil fine. The majority of the revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. A small portion of the revenue would be deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs.

House Bills 4250 and 4251 would result in an indeterminate increase in fee revenue remitted to the Department of State (DOS) from basic driver improvement course providers, depending on police enforcement and the number of individuals ordered to take a course by a court. For every course taken, DOS receives \$17 per course taken from course providers to cover the costs of implementing and administering the basic driver improvement course program. DOS receives approximately \$675,000 annually in basic driver improvement course fee revenue.

House Bill 4252 would require MSP to prepare a report on violations and enforcement of the provisions of the bills. This could likely be accomplished with existing departmental resources and would not have a fiscal impact on the department.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.