

Legislative Analysis



USE OF DEVICES WHILE DRIVING

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4250 as introduced
Sponsor: Rep. Matt Koleszar

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

House Bill 4251 as introduced
Sponsor: Rep. Tyrone Carter

House Bill 4252 as introduced
Sponsor: Rep. Mike Mueller

Committee: Transportation, Mobility and Infrastructure
Complete to 4-11-23

SUMMARY:

House Bills 4250, 4251, and 4252 would amend different sections of the Michigan Vehicle Code to prohibit, with some exceptions, the use of cell phones and other mobile devices while operating a motor vehicle. 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 apply to using a device for texts, calls, videos, and engaging with social network sites, among other activities. Violations could result in a civil fine, community service, a suspended license, or points assessed on the driver's driving record, depending in part on circumstances such as repeat violations.

House Bill 4250 would amend section 602b of the code to generally prohibit 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 currently prohibits a person from using a wireless two-way communication device¹ 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.² 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 This includes a cell phone, but does not include an on-demand automated motor vehicle network.

² With regard to commercial motor vehicles, these provisions reflect federal motor carrier safety regulations that have been in effect since 2010 for texting (<https://www.law.cornell.edu/cfr/text/49/392.80>) and since 2012 for hand-held telephones (<https://www.law.cornell.edu/cfr/text/49/392.82>).

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 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, for example 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***.

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 Service³ or the Amateur Radio Service⁴ 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.

³ <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/citizens-band-radio-service-cbrs>

⁴ <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/amateur-radio-service>

Exceptions

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.
- 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,⁵ 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, 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.

⁵ See https://www.sae.org/binaries/content/assets/cm/content/blog/sae-j3016-visual-chart_5.3.21.pdf

Sanctions

An individual violating the above prohibition 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.

Any civil fine ordered above would have to be doubled (\$200/\$500) if the individual was involved in an accident while violating the above prohibition. In addition, in that event, a police officer investigating the accident would have to indicate in a written accident report that the individual was using a mobile electronic device at the time of the accident.

The court could order the secretary of state to suspend, for up to 90 days, the driver's license of any individual responsible for three or more civil infractions under the bill within a three-year period.

Enforcement

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.

MCL 257.602b

House Bill 4251 would require the secretary of state to suspend an individual's driver's license if a court ordered the license suspended for three or more violations of section 602b within a three-year period as provided in House Bill 4250. The suspension would be for the period provided in the order, up to the 90-day maximum provided in House Bill 4250.

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 section 602b (that is, a violation of House Bill 4250) 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.

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.

Fleeing and eluding

Section 319 of the code now requires a one-year license suspension for a violation of section 602a(2) or (3), which is fleeing and eluding⁶ in the third or fourth degree. The bill would amend this to instead require a one-year suspension for any violation of section 602a. Currently, violations of section 602a(4) or (5)—fleeing and eluding in the first or second degree—are subject to license *revocation* under section 303 of the code. This would appear to conflict with the bill.

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

MCL 257.319, 257.319b, and 257.320a

House Bill 4252 would amend section 602c, which generally prohibits an individual with a level 1 or 2 graduated license⁷ 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). [Note: Since this prohibition appears to be wholly included in section 602b, it is unclear what part of it is additional to those requirements. In addition, it is unclear whether specifically prohibiting level 1 or 2 drivers from engaging in conduct that all drivers are prohibiting from engaging in under section 602b could raise the question of whether other Vehicle Code provisions that apply to all drivers only apply to level 1 or 2 drivers when specifically so provided.]

The above 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. [Note: It seems potentially unclear whether other exceptions described in section 602b (e.g., reporting a fire or a hazardous materials emergency) would also apply to these drivers. That is, it could be unclear whether the *exceptions* in section 602b are necessarily part of the referenced *requirements* that section 602c is *in addition to*.]

A person who violates section 602c is responsible for a civil infraction and must pay a civil fine in any amount up to \$100. [Note: Unlike civil fines for a violation of section 602b, this

⁶ "Fleeing and eluding" essentially means failing to stop after being signaled to do so by a police officer.

⁷ Typically, but not always, these drivers are 14 to 16 years old. Michigan has a three-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>.

fine is mandatory, albeit as a range rather than a fixed amount. Community service would not be an alternative or additional option. The fine under section 602c would not be doubled when the violation involves an accident. However, it is potentially unclear whether the sanctions in section 602b, which prohibits the same conduct by any operator of a motor vehicle, could apply to these violations.]

Finally, section 602c is currently known as Kelsey's Law. The bill would change this to *the* Kelsey's Law.

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. (Section 602b(1) is the provision that now prohibits texting by the operator of a motor vehicle other than a commercial vehicle or a school bus.) [Note: This change would appear to require an abstract for a violation of section 602c to be forwarded to the secretary of state for entry on the driver's driving record. However, section 319, as amended by House Bill 4251, would still prohibit points from being entered on a driving record for a violation of section 602c.]

Civil fines

The bill would amend section 907 to implement the assessment of civil fines for a violation of section 602b as provided in that section (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, based on available data, the following information:

- 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

All three bills would have to be enacted before any of them could take effect. Each bill would take effect 180 days after being enacted.

FISCAL IMPACT:

House Bills 4250 and 4251 would result in an indeterminate increase in license reinstatement fee revenue depending on police enforcement and the number of individuals ordered to have their licenses suspended by a court under section 319 of the Vehicle Code. Individuals with licenses suspended under section 319 are required to pay a \$125 license reinstatement fee to drive again after the required suspension period. Revenue from license reinstatements under this section is distributed to several stated

departments and allocated as shown in the table below. The secretary of state receives approximately \$3.4 million annually in license reinstatement fee revenue.

Distribution of License Reinstatement Revenue

Receiving Department/Entity	Amount	Fund Legal Basis (MCL)	Description
State	\$50	Reinstatement Fees 257.320e	Supports various operations within the Department of State.
Transportation	\$35	Economic Development Fund 247.902	Funds highway, road, and street projects that support economic growth.
Judiciary	\$30	Drunk Driving Fund 257.625h	Funds the drunk driving case-flow program, which assists trial courts with timely disposition of drunk driving offense cases.
State Police	\$10	Drunk Driving Prevention and Training Fund 257.320e	Supports the purchase and maintenance of breath-alcohol testing equipment and training for law enforcement officers on using the equipment.

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.

The bills also 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.

Legislative Analysts: E. Best
Rick Yuille
Fiscal Analysts: Michael Cnossen
Marcus Coffin
Robin Risko

■ 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.