



**H.B. 361**

123rd General Assembly  
(As Introduced)

**Reps. Damschroder, Terwilleger, Jerse, Pringle, Logan, Cates, O'Brien,  
Young, Opfer**

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**BILL SUMMARY**

- For purposes of the state OMVI law, establishes reduced prohibited alcohol concentrations in a person's blood, breath, or urine for persons with a previous state or local OMVI offense or other alcohol-related and vehicle-related offense within a six-year period.
- Sets the new reduced prohibited alcohol concentrations at the following levels: (1) .02 of 1% by weight of alcohol in a person's blood, (2) .02 of one gram by weight of alcohol per 210 liters of a person's breath, and (3) .028 of one gram by weight of alcohol per 100 milliliters of a person's urine.

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## CONTENT AND OPERATION

### State OMVI: current prohibitions and penalties

#### Prohibitions

R.C. 4511.19(A) sets forth the offense of "state OMVI." It prohibits a person from operating any vehicle, streetcar, or trackless trolley within Ohio if any of the following apply: (1) the person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, (2) the person has a concentration of .10 of 1% or more by weight of alcohol in the person's blood, (3) the person has a concentration of .10 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (4) the person has a concentration of .14 of one gram or more by weight of alcohol per 100 milliliters of the person's urine. Items (2) to (4) are known as "*per se*" violations. (R.C. 4511.19(A)(1), (2), (3), and (4).)

In any proceeding arising out of one incident, a person may be charged with the offense of operating a vehicle, streetcar, or trackless trolley within Ohio while under the influence of alcohol, a drug of abuse, or both and the offense of OMVUAC (operating a motor vehicle after underage alcohol consumption), but the person cannot be convicted of more than one violation of these provisions (current R.C. 4511.19(C)).

In a criminal prosecution or juvenile court proceeding for a state or local OMVI offense, if the defendant submitted to a chemical test of the defendant's blood, breath, or urine and if there was at the time the bodily substance was withdrawn a concentration of less than .10 of 1% by weight of alcohol in the person's blood, less than .10 of one gram by weight of alcohol per 210 liters of the person's breath, or less than .14 of one gram by weight of alcohol per 100 milliliters of the person's urine, this fact may be considered with other competent evidence in determining the guilt or innocence of the person. This provision does not limit or affect a criminal prosecution or juvenile court proceeding for a state or local OMVUAC offense relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine. (Current R.C. 4511.19(D)(2).)

## Penalties

(1) *First offense within a six-year period ("first-time OMVI offender")*. Except as described in items (2), (3), or (4), below, state OMVI is a misdemeanor of the first degree, and the offender is subject to the following penalties:

(a) A term of imprisonment of three consecutive days, and the court may sentence the offender under the Misdemeanor Sentencing Law to a longer term of imprisonment. The court may suspend this mandatory term of imprisonment in specified circumstances, most often by requiring the offender to attend a certified drivers' intervention program for three consecutive days. (R.C. 4511.99(A)(1).)

(b) A fine of not less than \$200 but not more than \$1,000 (R.C. 4511.99(A)(1)).

(c) Suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege for not less than six months but not more than three years (R.C. 4507.16(B)(1)).

(d) A charge of six points against the offender's driver's license (R.C. 4507.021(G)(4)).

(e) If the court places the offender on probation, it may require the offender to attend and complete an approved treatment or education program, and may impose any other conditions of probation it considers necessary (R.C. 4511.99(A)(1)).

(2) *Second offense within a six-year period ("second-time OMVI offender")*. Except as provided in item (4), below, if, within six years of the offense, the offender previously has been convicted of or pleaded guilty to one alcohol-related and vehicle-related offense (see **COMMENT 1** for a listing of those offenses), state OMVI is a misdemeanor of the first degree, and the offender is subject to the following penalties:

(a) A term of imprisonment of ten consecutive days, and the court may sentence the offender under the Misdemeanor Sentencing Law to a longer term of imprisonment. As an alternative to the term of imprisonment, under certain conditions the court may sentence the offender to both a term of imprisonment of five consecutive days and not less than 18 days of electronically monitored house arrest (EMHA). The five consecutive days of imprisonment and the period of EMHA cannot exceed six months, and the five consecutive days do not have to be served prior to or consecutively with the period of EMHA. (R.C. 4511.99(A)(2)(a).)

(b) A fine of not less than \$300 but not more than \$1,500 (R.C. 4511.99(A)(2)(a)).

(c) Suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege for not less than one year but not more than five years (R.C. 4507.16(B)(2)).

(d) A charge of six points against the offender's driver's license (R.C. 4507.021(G)(4)).

(e) The court may require the offender to attend a certified drivers' intervention program. If the program's officials determine that the offender is alcohol dependent, they must notify the court, and the court must order the offender to obtain treatment through an authorized alcohol and drug addiction program, paid for by the offender. (R.C. 4511.99(A)(2)(a).)

(f) Regardless of whether the vehicle the offender was operating at the time of the offense is registered in the offender's name or in the name of another person, the court, in addition to all other sanctions and subject to an "innocent owner" exception, must order the immobilization for 90 days of the vehicle the offender was operating at the time of the offense and the impoundment for 90 days of its license plates (R.C. 4511.99(A)(2)(b)).

(3) **Third offense within a six-year period ("third-time OMVI offender")**. Except as provided in item (4), below, if, within six years of the offense, the offender previously has been convicted of or pleaded guilty to two alcohol-related and vehicle-related offenses, the offender is subject to the following penalties:

(a) A term of imprisonment of 30 consecutive days, and the court may sentence the offender to a longer term of imprisonment of not more than one year. As an alternative to the term of imprisonment, under certain conditions the court may sentence the offender to both a term of imprisonment of 15 consecutive days and not less than 55 days of EMHA. The 15 consecutive days of imprisonment and the period of EMHA cannot exceed one year, and the 15 consecutive days do not have to be served prior to or consecutively with the period of EMHA. (R.C. 4511.99(A)(3)(a).)

(b) A fine of not less than \$500 but not more than \$2,500 (R.C. 4511.99(A)(3)(a)).

(c) Suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege for not less than one year but not more than ten years (R.C. 4507.16(B)(3)).

(d) A charge of six points against the offender's driver's license (R.C. 4507.021(G)(4)).

(e) The court must require the offender to attend an alcohol and drug addiction program, paid for by the offender. If the court determines that the offender is unable to pay the cost of attendance at the treatment program, it may order that payment of the cost of the offender's attendance be made from that court's Indigent Drivers Alcohol Treatment Fund. (R.C. 4511.99(A)(3)(a).)

(f) Regardless of whether the vehicle the offender was operating at the time of the offense is registered in the offender's name or in the name of another person, the court, in addition to all other sanctions and subject to an "innocent owner" exception, must order the immobilization for 180 days of the vehicle the offender was operating at the time of the offense and the impoundment for 180 days of its license plates (R.C. 4511.99(A)(3)(b)).

(4) **Fourth or subsequent offense within a six-year period ("fourth or subsequent OMVI offender")**. If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to three or more alcohol-related and vehicle-related offenses, or if the offender previously has been convicted of state OMVI under circumstances in which the offense was a felony and regardless of when the violation and the conviction or guilty plea occurred, state OMVI is a felony of the fourth degree, and the offender is subject to the following penalties:

(a) A term of local incarceration of 60 consecutive days if it is the offender's first state felony OMVI offense or a mandatory prison term of 60 consecutive days in a state facility if it is the offender's second or subsequent state felony OMVI offense. If the offender is required to serve a mandatory term of local incarceration of 60 consecutive days, the court may impose a sentence that includes a term of EMHA, provided that the term of EMHA cannot commence until after the offender has served the mandatory term of local incarceration. (R.C. 4511.99(A)(4)(a).)

(b) A fine of not less than \$750 but not more than \$10,000 (R.C. 4511.99(A)(4)(a)).

(c) Suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege for a period of not less than three years, and the judge may permanently revoke the same (R.C. 4507.16(B)(4)).

(d) A charge of six points against the offender's driver's license (R.C. 4507.021(G)(4)).

(e) The court must require the offender to attend an alcohol and drug addiction program, paid for by the offender. If the court determines that the offender is unable to pay the cost of attendance at the treatment program, it may order that payment of the cost of the offender's attendance be made from that court's Indigent Drivers Alcohol Treatment Fund. (R.C. 4511.99(A)(4)(a).)

(f) Regardless of whether the vehicle the offender was operating at the time of the offense is registered in the offender's name or in the name of another person, the court, in addition to all other sanctions and subject to an "innocent owner" exception, must order the criminal forfeiture to the state of the vehicle the offender was operating at the time of the offense (R.C. 4511.99(A)(4)(b)).

**State OMVUAC: current prohibitions and penalties**

**Prohibitions**

R.C. 4511.19(B) sets forth the offense of "state OMVUAC." It prohibits a person under 21 years of age from operating any vehicle, streetcar, or trackless trolley within Ohio if any of the following apply: (1) the person has a concentration of at least .02 of 1% but less than .10 of 1% by weight of alcohol in the person's blood, (2) the person has a concentration of at least .02 of one gram but less than .10 of one gram by weight of alcohol per 210 liters of the person's breath, or (3) the person has a concentration of at least .028 of one gram but less than .14 of one gram by weight of alcohol per 100 milliliters of the person's urine. (R.C. 4511.19(B)(1), (2), and (3).)

**Penalties**

**First-time OMVUAC offender.** If a person pleads guilty to or is convicted of OMVUAC and within one year of the offense the person has not pleaded guilty to or been convicted of an alcohol-related and motor vehicle-related offense, the person is guilty of a misdemeanor of the fourth degree (R.C. 4511.99(N)(1)(a)). The punishment for such a misdemeanor is a fine of not more than \$250, not more than 30 days imprisonment, or both. In addition, the court must suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege for a period of not less than 60 days but not more than two years (R.C. 4511.99(N)(2) and 4507.16(E)).

**Second-time or subsequent OMVUAC offender.** If a person pleads guilty to or is convicted of OMVUAC and within one year of the offense has pleaded guilty to or been convicted of an alcohol-related and vehicle-related offense, the person is guilty of a misdemeanor of the third degree (R.C. 4511.99(N)(1)(b)). The punishment for such a misdemeanor is a fine of not more than \$500, not more

than 60 days imprisonment, or both. In addition, the court must suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege for a period of not less than 60 days but not more than two years. (R.C. 4511.99(N)(2) and 4507.16(E).)

**New state OMVI prohibition enacted by the bill; penalties**

**Prohibition**

The bill adds a new prohibition to the current prohibitions contained in R.C. 4511.19(A) and (B). It prohibits any person who has been convicted of or pleaded guilty to either one or more vehicle-related and alcohol-related offenses specified in current law or one or more violations of the new prohibition from operating any vehicle, streetcar, or trackless trolley within this state if the offender was convicted of or pleaded guilty to the previous violation or the latest in time of the previous violations within six years of the date of the operation of the vehicle, streetcar, or trackless trolley within this state, and any of the following apply to the person during that operation:

(1) The person has a concentration of at least .02 of 1% by weight of alcohol in the person's blood;

(2) The person has a concentration of at least .02 of one gram by weight of alcohol per 210 liters of the person's breath;

(3) The person has a concentration of at least .028 of one gram by weight of alcohol per 100 milliliters of the person's urine. (New R.C. 4511.19(C)(1) to (3).)

The result is that if a person pleads guilty to or is convicted of an alcohol-related and vehicle-related offense, for the next six years the person's operation of a vehicle is subject to the new reduced alcohol concentration prohibition. If the person does not commit another alcohol-related and motor vehicle-related offense within the six-year period, the person's operation of a motor vehicle then becomes subject to the "standard" OMVI prohibition contained in R.C. 4511.19(A).

The bill provides that in any proceeding arising out of one incident, a person may be charged with the offense of operating a vehicle, streetcar, or trackless trolley within Ohio while under the influence of alcohol, a drug of abuse, or both and the offense of OMVUAC or a violation of the new reduced alcohol concentration prohibition, but the person cannot be convicted of more than one violation of these provisions (new R.C. 4511.19(D)).

The bill retains the provision of current law that states in a criminal prosecution or juvenile court proceeding for a state or local OMVI offense, if there was at the time of the bodily substance was withdrawn a concentration of less than .10 of 1% by weight of alcohol in the person's blood, less than .10 of one gram by weight of alcohol per 210 liters of the person's breath, or less than .14 of one gram by weight of alcohol per 100 milliliters of the person's urine, this fact may be considered with other competent evidence in determining the guilt or innocence of the person. The bill provides that this provision does not limit or affect a criminal prosecution or juvenile court proceeding for a state or local OMVUAC offense or a violation of the new reduced alcohol concentration prohibition or a substantially equivalent municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine. (New R.C. 4511.19(E)(2).)

**Penalties: fines, imprisonment, and the other penalties contained in R.C. 4511.99(A)**

With certain minor exceptions, the bill does not make substantive changes in the current OMVI penalty provisions. The result is that while the bill provides that if a person pleads guilty to or is convicted of an alcohol-related and vehicle-related offense for the next six years that person's operation of a vehicle is subject to the bill's new reduced alcohol concentration prohibition, the penalties to which the person are subject for a subsequent state OMVI offense are the same as specified in current law.

(1) **First offense within a six-year period ("first-time OMVI offender")**. The bill does not affect the current penalties imposed upon a person who pleads guilty to or is convicted of state OMVI and within six years of the offense has not pleaded guilty to or been convicted of an alcohol-related and vehicle-related offense (R.C. 4511.99(A)(1)).

(2) **First violation of the new reduced alcohol concentration prohibition within a six-year period**. Under current law, except for those cases in which the state felony OMVI provisions apply, a second-time state OMVI offender is a person who pleads guilty to or is convicted of state OMVI and who, within six years of the offense, previously has been convicted of or pleaded guilty to one alcohol-related and vehicle-related offense. Such a person is subject to the penalties reviewed in the preceding portion of this analysis that reviews the current penalties for state OMVI, specifically the portion captioned "(2) **Second offense within a six-year period ("second-time OMVI offender")**."

The bill provides that except as otherwise provided in the state felony OMVI provisions, if, for the first time in the six-year period described in the new reduced alcohol concentration provision, the offender is convicted of or pleads

guilty to one violation of the new reduced alcohol concentration prohibition, the person is guilty of a misdemeanor of the first degree and is subject to these same current penalties (R.C. 4511.99(A)(2)(a)).

(3) **Second violation of the new reduced alcohol concentration prohibition within a six-year period.** Under current law, except for those cases in which the state felony OMVI provisions apply, a third-time OMVI offender is a person who pleads guilty to or is convicted of state OMVI and who, within six years of the offense, previously has been convicted of or pleaded guilty to two alcohol-related and vehicle-related offenses. Such a person is subject to the penalties reviewed in the preceding portion of this analysis that reviews the current penalties for state OMVI, specifically the portion captioned "(3) **Third offense within a six-year period ('third-time OMVI offender')**."

The bill provides that except as otherwise provided in the state felony OMVI provisions, if, for the second time in the six-year period described in the new reduced alcohol concentration provision, the offender is convicted of or pleads guilty to a violation of the new reduced alcohol concentration prohibition, the person is guilty of a misdemeanor of the first degree and is subject to these same current penalties (R.C. 4511.99(A)(3)(a)).

(4) **Third or subsequent violation of the new reduced alcohol concentration prohibition within a six-year period.** Under existing law, if, within six years of the current state OMVI offense, the offender previously has been convicted of or pleaded guilty to three or more alcohol-related and vehicle-related offenses, or if the offender previously has been convicted of state OMVI under circumstances in which the offense was a felony and regardless of when the violation and the conviction or guilty plea occurred, state OMVI is a felony of the fourth degree, and the offender is subject to the penalties reviewed in the preceding portion of this analysis that reviews the current penalties for state felony OMVI, specifically the portion captioned "(4) **Fourth or subsequent offense within a six-year period ('fourth or subsequent OMVI offender')**."

The bill provides that if, for a third or subsequent time in the six-year period described in the new reduced alcohol concentration provision, the offender is convicted of or pleads guilty to a violation of the new reduced alcohol concentration prohibition, or if the offender previously has been convicted of state OMVI under circumstances in which the offense was a felony and regardless of when the violation and the conviction or guilty plea occurred, state OMVI is a felony of the fourth degree, and the offender is subject to these same current penalties (R.C. 4511.99(A)(4)(a)).

**Penalties: driver's license suspensions**

The bill does not change any of the current post-conviction, judicially imposed driver's license suspension periods. The bill does modify, however, the language in three of these four suspension provisions in order to take into account the new reduced alcohol concentration prohibition.

(1) **First-time OMVI offender.** The bill does not affect in any manner the current provision that prescribes the six-month to three-year suspension period for a first-time OMVI offender (R.C. 4507.16(B)(1)).

(2) **Second-time OMVI offender.** Current law provides that if an offender pleads guilty to or is convicted of state or local OMVI and, except for those cases in which the state felony OMVI provisions apply, if within six years of the offense the offender has pleaded guilty to or been convicted of one alcohol-related and vehicle-related offense, the offender's driver's or commercial driver's license or permit or nonresident operating privilege must be suspended for not less than one year but not more than five years.

The bill modifies the first portion of this provision to take into account the new reduced alcohol concentration prohibition. It provides that except as otherwise provided in the state felony OMVI provisions, if the offender is convicted of or pleads guilty to a violation of the new reduced alcohol concentration prohibition and is sentenced as a second-time OMVI offender under R.C. 4511.99(A)(2), or if, within six years of the current violation of 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 or to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine for which the offender is being sentenced, the offender has pleaded guilty to or been convicted of one alcohol-related and vehicle-related offense, the offender's driver's or commercial driver's license or permit or nonresident operating privilege must be suspended for not less than one year but not more than five years. (R.C. 4507.16(B)(2).)

(3) **Third-time OMVI offender.** Current law provides that if an offender pleads guilty to or is convicted of state or local OMVI and, except for those cases in which the state felony OMVI provisions apply, if within six years of the offense the offender has pleaded guilty to or been convicted of two alcohol-related and vehicle-related offenses, the offender's driver's or commercial driver's license or permit or nonresident operating privilege must be suspended for not less than one year but not more than ten years.

The bill modifies the first portion of this provision to take into account the new reduced alcohol concentration prohibition. It provides that except as otherwise provided in the state felony OMVI provisions, if the offender is convicted of or pleads guilty to a violation of the new reduced alcohol concentration prohibition and is sentenced as a third-time OMVI offender under R.C. 4511.99(A)(3), or if, within six years of the current violation of 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 or to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine for which the offender is being sentenced, the offender has pleaded guilty to or been convicted of two alcohol-related and vehicle-related offenses, the offender's driver's or commercial driver's license or permit or nonresident operating privilege must be suspended for not less than one year but not more than ten years. (R.C. 4507.16(B)(3).)

(4) ***Fourth or subsequent OMVI offender.*** Current law provides that if an offender pleads guilty to or is convicted of state or local OMVI and if within six years of the offense the offender has pleaded guilty to or been convicted of three or more alcohol-related and vehicle-related offenses, or if the offender previously has pleaded guilty to or been convicted of state OMVI under circumstances in which the violation was a felony and regardless of when the violation and the conviction or guilty plea occurred, the judge must suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege for not less than three years, and the judge may permanently revoke the same.

The bill modifies the first portion of this provision to take into account the new reduced alcohol concentration prohibition. It provides that if the offender is convicted of or pleads guilty to a violation of the new reduced alcohol concentration prohibition and is sentenced as a fourth or subsequent OMVI offender under R.C. 4511.99(A)(4), or if, within six years of the current violation of 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 or to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine for which the offender is being sentenced, the offender has pleaded guilty to or been convicted of a violation of the new reduced alcohol concentration prohibition and was sentenced as a fourth or subsequent OMVI offender, or to three or more alcohol-related and vehicle-related offenses, or if the offender previously has pleaded guilty to or been convicted of state OMVI under circumstances in which the violation was a felony and regardless of when the violation and the conviction or guilty plea occurred, the judge must suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege for not

less than three years, and the judge may permanently revoke the same. (R.C. 4507.16(B)(4).)

### **Occupational driving privileges**

#### **Current law**

Current law provides that if a person's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended due to a state or local OMVI offense, a state or local OMVUAC offense, or under the Implied Consent Law, and the person, within the preceding seven years, has pleaded guilty to or been convicted of three or more alcohol-related and vehicle-related offenses, the person is not entitled to request, and the judge or mayor cannot grant to the person, occupational driving privileges.

The bill modifies these provisions. It provides that if a person's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended due to a state or local OMVI offense, a state or local OMVUAC offense, or under the Implied Consent Law, and the person, within the preceding seven years, has pleaded guilty to or been convicted of state OMVI, state OMVUAC, or violations of the new reduced alcohol concentration prohibition and the number of separate incidents constituting those violations in which the person was operating a vehicle and pleaded guilty to or was convicted of operating a vehicle while under the influence of alcohol, a drug of abuse, or both or of operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine totals three or more, or the person, within the preceding seven years, has pleaded guilty to or been convicted of three or more other alcohol-related and motor vehicle-related offenses, including violations of a municipal ordinance of a municipal corporation located in any other state that is substantially similar to state OMVI, state OMVUAC, or the new reduced alcohol concentration prohibition and the number of separate incidents constituting those violations in which the other state totals three or more, the person is not entitled to request, and the judge or mayor cannot grant to the person, occupational driving privileges. (R.C. 4507.16(F) and (G) and 4511.191(I)(1) and (4).)

#### **Cross-reference additions**

The bill contains a number of Revised Code sections that contain a cross-reference to "division (A) of section 4511.19 of the Revised Code" or "division (A) or (B) of section 4511.19 of the Revised Code." These are references to the current state OMVI prohibitions ((A)(1), (2), (3), and (4)) and to OMVUAC ((B)(1), (2), and (3)). The bill modifies these cross-references to include a reference to the new reduced alcohol concentration prohibition, which is contained

in new R.C. 4511.19(C). The cross-references thus read either "division (A) or (C) of section 4511.19 of the Revised Code" or "division (A), (B), or (C) of section 4511.19 of the Revised Code" and make the respective provisions applicable to the new reduced alcohol concentration prohibition. These cross-references are in the following sections:

(1) R.C. 2151.34, which provides that a child who is adjudicated a juvenile traffic offender for having committed an OMVI offense may be confined in a detention home or district detention home, with certain restrictions.

(2) R.C. 2151.356(A)(6), which provides for the disposition of a child who is adjudicated a juvenile traffic offender for having committed an OMVI offense.

(3) R.C. 4507.021(G)(4), which provides for the assessment of six points against the driver's or commercial driver's license or permit of a person who pleads guilty to or is convicted of state or local OMVI.

(4) R.C. 4507.08(A) and (D)(2), which prohibits the issuance of a temporary instruction permit or probationary driver's license to a minor who has committed one of a number of specified offenses, including state OMVI, unless the minor has been required by the court to attend a drug abuse or alcohol abuse education, intervention, or treatment program and the minor has successfully completed it.

(5) R.C. 4507.162(C), which prohibits the granting of occupational driving privileges to a minor whose temporary instruction permit, restricted license, or probationary driver's license has been suspended by the Registrar if, within the seven-year period preceding the current offense, the minor was convicted of, pleaded guilty to, or was adjudicated in juvenile court of having committed three or more alcohol-related and vehicle-related offenses.

(6) R.C. 4511.191(F)(2), which specifies the suspension period that is imposed under the Implied Consent Law for a person who was arrested for OMVI, the person submitted to a chemical test of the person's blood, breath, or urine to determine its alcohol content under the Implied Consent Law, the person was found to have a prohibited concentration of alcohol in the person's blood, breath, or urine, and the person, within the preceding six years, has pleaded guilty to or been convicted of one alcohol-related and vehicle-related offense.

(7) R.C. 4511.193(B)(2), which provides that if a person is convicted of or pleads guilty to a local OMVI offense and within the six-year period preceding the current offense the person was convicted of or pleaded guilty to one or more alcohol-related and vehicle-related offenses, the sentencing court must order the

immobilization or criminal forfeiture to the state of the motor vehicle the offender was operating at the time of the offense.

(8) R.C. 4511.195(B)(1), which requires the pre-trial seizure of the motor vehicle a person was operating if the person is arrested for state or local OMVI and within the six-year period preceding the alleged violation the person was convicted of or pleaded guilty to one or more alcohol-related and vehicle-related offenses, or if the person previously has been convicted of or pleaded guilty to a violation of the new reduced alcohol concentration prohibition under circumstances in which the violation was a felony and regardless of when the violation and the conviction or guilty plea occurred.

### **Cross-reference changes**

The bill contains a number of other Revised Code sections that also contain a cross-reference to "division (A) of section 4511.19 of the Revised Code." These references, however, relate to a state OMVI violation that could have been committed only by a person who has committed multiple alcohol-related and vehicle-related offenses within a six-year period. The bill changes these cross-references so that they refer to the new reduced alcohol concentration prohibition, which is contained in new R.C. 4511.19(C). The cross-references thus read "division (C) of section 4511.19 of the Revised Code." These cross-references are in the following sections:

(1) R.C. 2929.01(JJ), which is a definition of "fourth degree felony OMVI offense."

(2) R.C. 2929.23(A)(3)(c) and (d) and (B)(1), which describes which state felony OMVI offenders are eligible for EMHA.

(3) R.C. 4503.234(B), which specifies certain motor vehicle offenses for which criminal forfeiture to the state of the motor vehicle the offender was operating at the time of the offense is a penalty.

(4) R.C. 4503.235(B)(1), which is the "innocent owner" exception to certain motor vehicle immobilization and criminal forfeiture provisions, including those relating to state OMVI.

(5) R.C. 4507.021(C)(3), which requires the abstract of an offense that a court sends to the Registrar of Motor Vehicles to indicate that the Registrar and all deputy registrars are prohibited from registering a motor vehicle in the name of the person listed in the abstract for a particular period of time.

(6) R.C. 4511.193(B)(2)(c), which provides that if a person is convicted of or pleads guilty to a local OMVI offense and within the six-year period preceding the current offense the person was convicted of or pleaded guilty to three or more alcohol-related and vehicle-related offenses, or if the person previously has been convicted of or pleaded guilty to a violation of the new reduced alcohol concentration prohibition under circumstances in which the violation was a felony and regardless of when the violation and the conviction or guilty plea occurred, the sentencing court must order the criminal forfeiture to the state of the motor vehicle the offender was operating at the time of the offense.

(7) R.C. 4511.195(B)(1), (C)(2)(a) and (b), and (D)(1), (2), and (3), which requires the pre-trial seizure of the motor vehicle a person was operating if the person is arrested for state or local OMVI and within the six-year period preceding the alleged violation the person was convicted of or pleaded guilty to one or more alcohol-related and vehicle-related offenses, or if the person previously has been convicted of or pleaded guilty to a violation of the new reduced alcohol concentration prohibition under circumstances in which the violation was a felony and regardless of when the violation and the conviction or guilty plea occurred.

### **Miscellaneous changes**

#### **Use of certain portions of state OMVI fine money**

**Second-time OMVI offender.** Under current law, \$35 of every fine imposed on a second-time OMVI offender must be paid to an enforcement and education fund established by the legislative authority of the law enforcement agency in this state that primarily was responsible for the arrest of the offender. The agency may use this share only to pay the costs of certain activities, including ". . . those costs it incurs in enforcing division (A) of section 4511.19 of the Revised Code . . . ." R.C. 4511.19(A) are the state OMVI provisions. The bill removes the reference to "division (A) of" in this phrase, thus making the phrase a general reference and enabling those fine moneys to be used to enforce not only the state OMVI laws but also the state OMVUAC laws plus the new reduced alcohol concentration prohibition. (R.C. 4511.99(A)(2)(a).)

**Third-time OMVI offenders and fourth or subsequent OMVI offenders.** Under current law, \$227 of every fine imposed on a third-time OMVI offender must be paid to the political subdivision responsible for housing the offender during the offender's term of incarceration. The political subdivision may use this share only to pay for ignition interlock devices or reimburse incarceration costs it incurs in housing persons who ". . . violate division (A) of section 4511.19 of the Revised Code or a substantially similar municipal ordinance . . . ." The bill removes the reference to "division (A) of" in this phrase, thus making the phrase a

general reference and enabling the political subdivision to use those fine moneys to pay or reimburse incarceration costs it incurs in housing persons who commit not only state OMVI but also state OMVUAC plus those who violate the new reduced alcohol concentration prohibition. (R.C. 4511.99(A)(3)(a).)

Similarly, current law requires \$390 of every fine imposed on a fourth or subsequent OMVI offender to be paid to the political subdivision responsible for housing the offender during the offender's term of incarceration. The political subdivision may use this share only to pay for ignition interlock devices and to pay or reimburse incarceration costs it incurs in housing persons who ". . . violate division (A) of section 4511.19 of the Revised Code or a substantially similar municipal ordinance . . . ." The bill removes the reference to "division (A) of" in this phrase, thus making the phrase a general reference and enabling the political subdivision to use those fine moneys to pay or reimburse incarceration costs it incurs in housing persons who commit not only state OMVI but also state OMVUAC plus those who violate the new reduced alcohol concentration prohibition. (R.C. 4511.99(A)(4)(a).)

***Suspension of a driver's license and motor vehicle registrations upon certain convictions***

***Current law.*** Under current law, whenever the Registrar of Motor Vehicles receives notice from a court of record or mayor's court that a person has been convicted of, pleaded guilty to, or forfeited any bail or collateral deposited to secure an appearance for trial for any of the crimes specified in R.C. 4507.16, the Registrar must suspend the driver's or commercial driver's license or permit or nonresident operating privilege of the person and the registration of all motor vehicles registered in the name of the person as the owner. Unless otherwise required by law, however, the Registrar cannot suspend the person's driver's or commercial driver's license or permit or nonresident operating privilege and motor vehicle registration if the person has given or immediately gives and thereafter maintains for a period of three years proof of financial responsibility with respect to any motor vehicle for which the person registers as its owner. (Sec. 4509.31(A).) This is commonly known as "SR-22 high risk insurance."

This provision does not apply to any person who is convicted of or pleads guilty to a state or local OMVI or OMVUAC offense if the offender previously has not been convicted of a state or local OMVI or OMVUAC offense or of a violation of a statute of the United States or of any other state "or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to division (A) or (B) of section 4511.19 of the Revised Code" (state OMVI or OMVUAC), and the offender did not cause serious physical harm to a person other than the offender (sec. 4509.31(B)).

**Operation of the bill.** The bill modifies the phrase "or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to division (A) or (B) of section 4511.19 of the Revised Code" (contained in current 4509.31(B)) by eliminating the reference to "division (A) or (B) of." The resulting phrase reads "or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to section 4511.19 of the Revised Code." This makes the reference to R.C. 4511.19 a general reference, so that it includes state OMVI and OMVUAC as well as the new reduced alcohol concentration prohibition of R.C. 4511.19(C).

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## COMMENT

The following alcohol-related and vehicle-related offenses are the offenses the convictions of which are relevant for purposes of determining the sanctions to be imposed for a conviction of state OMVI: (a) state OMVI or state OMVUAC, (b) a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or both, (c) a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, (d) involuntary manslaughter in a case in which the offender was subject to the sanctions described in R.C. 2903.04(D), (e) aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, or a municipal ordinance substantially similar to vehicular homicide in a case in which the jury or judge found that the offender was under the influence of alcohol, a drug of abuse, or both, or (f) a statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to state OMVI or state OMVUAC.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-26-99	p. 728

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