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*Bill Analysis*  
Legislative Service Commission

## **H.B. 518**

123rd General Assembly  
(As Introduced)

**Reps. Clancy, Allen, Cates, Gardner, Hollister, O'Brien, Taylor, Winkler**

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### **BILL SUMMARY**

- Prohibits the granting of occupational driving privileges to any person who is a second-time or subsequent OMVI or OMVUAC offender and who, at the time of arrest, refused to submit to a blood, breath, or urine test for drug or alcohol content.

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### **CONTENT AND OPERATION**

#### **State OMVI and OMVUAC, generally**

Current law contains prohibitions against operating a vehicle while under the influence of alcohol or a drug of abuse, or with a prohibited concentration of alcohol in the blood, breath, or urine (state OMVI). A person of any age is prohibited from operating a vehicle with a concentration of .10% (1 part per 1,000) or more by weight of alcohol in the blood, a concentration of .10 or more grams of alcohol by weight per 210 liters of breath, or a concentration of .14 or more grams of alcohol by weight per 100 milliliters of urine (R.C. 4511.19(A)(1) to (4), not in the bill). A person under 21 years of age is prohibited from operating a vehicle with a concentration of at least .02% (1 part per 5,000) but less than .10% (1 part per 1,000) by weight of alcohol in the blood, a concentration of at least .02 gram but less than .10 gram by weight of alcohol per 210 liters of breath, or a concentration of at least .028 gram but less than .14 gram by weight of alcohol per 100 milliliters of urine (R.C. 4511.19(B)(1) to (3)). A person who violates any of these latter prohibitions is guilty of the offense of operating a motor vehicle after underage alcohol consumption ("OMVUAC").

#### **The Implied Consent law, generally**

Under current law, any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking is deemed to have given consent to chemical testing of blood, breath, or urine to determine alcohol and drug content if the person is arrested for operating a vehicle

under the influence of alcohol or a drug of abuse. The chemical tests are administered at the request of a police officer who has reasonable grounds to believe the person was operating a vehicle while committing state or local OMVI or OMVUAC (R.C. 4511.191(A), not in the bill).

The officer informs the person who is under arrest that the person may refuse to submit to a chemical test, and also informs the person of both of the following:

(1) The consequences of the person's refusal to submit to the designated chemical test. One such consequence is the immediate administrative suspension of the person's driver's or commercial driver's license or permit or nonresident operating privilege for a period of between one and five years. The suspension period is dependent upon how many times during the previous five years the person refused a request to consent to a test to determine alcohol content. (R.C. 4511.191(C)(1)(a).)

(2) The consequences if the person submits to the designated chemical test and is found to have a prohibited concentration of alcohol in the person's blood, breath, or urine. One such consequence is the immediate administrative suspension of the person's license, permit, or privilege for a period of 90 days to three years, depending upon how many times during the previous six years the person consented to a test for alcohol content and was found to have a prohibited concentration in the blood, breath, or urine. (R.C. 4511.191(C)(1)(b).)

In all cases, this immediate administrative suspension terminates if at trial the person pleads guilty to or is convicted of the underlying state or local OMVI or OMVUAC offense. In addition, the duration of this immediate administrative suspension is credited against the post-conviction suspension the judge imposes on the offender for that underlying offense. (R.C. 4511.191(K).)

### **Post-conviction, judicially-imposed OMVI and OMVUAC suspensions**

#### **State and local OMVI offenses**

Current law provides that the trial judge of any court of record and the mayor of a mayor's court, in addition to or independent of all other penalties, must suspend the driver's or commercial driver's license or permit or nonresident operating privilege of any person who is convicted of or pleads guilty to a state or local OMVI offense for a specified minimum amount of time. The minimum ranges from six months to three years depending upon the person's prior history of offenses. Maximum periods of suspension are also specified. (See **COMMENT**.)

### *State and local OMVUAC offenses*

Current law provides that in addition to or independent of all other penalties, the trial judge of any court of record and the mayor of a mayor's court must suspend for not less than 60 days nor more than two years the license, permit, or nonresident operating privilege of any person who is convicted of or pleads guilty to a state or local OMVUAC offense (R.C. 4507.16(E)).

### *Occupational driving privileges during post-conviction, judicially-imposed OMVI and OMVUAC suspensions; changes made by the bill*

Current law generally permits a person whose license, permit, or privilege has been suspended as the result of the person's pleading guilty to or being convicted of a state or local OMVI or OMVUAC offense to apply to the judge or mayor for occupational driving privileges after a portion of the suspension period has elapsed. The period during which the person is not eligible to be granted occupational driving privileges is known as the "hard" suspension period. (R.C. 4507.16(F) and (G).)

In addition, a person is not entitled to request or receive occupational driving privileges if the person, within the seven preceding years, has been convicted of or pleaded guilty to three or more federal, state, or local OMVI or OMVUAC offenses, similar offenses of another state, or one of a number of specified Ohio vehicle-related and alcohol-related offenses. (R.C. 4507.16(F) and (G).)

The bill creates another category of persons who are not eligible to be granted occupational driving privileges. A person whose license, permit, or privilege has been suspended as the result of pleading guilty to or being convicted of a state or local OMVI or OMVUAC offense is not entitled to request or receive occupational driving privileges if all of the following apply (R.C. 4507.16(F) and (G)):

- (1) The person is a second or subsequent OMVI or OMVUAC offender;
- (2) At the time the person was arrested for OMVI or OMVUAC, the person refused the officer's request to submit to a test of blood, breath, or urine to determine alcohol content, thereby causing the person's license, permit, or privilege to be suspended immediately under the administrative license suspension provisions;
- (3) The incident that gave rise to the administrative license suspension is the same incident for which the person's license or permit or nonresident operating privilege was suspended post-conviction by the judge or mayor.

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## COMMENT

The following minimum and maximum license, permit, or privilege suspensions are specified in the OMVI law for state and local offenses:

(1) Except when following paragraph (2), (3), or (4) applies, the judge or mayor must suspend the offender's license or permit or privilege for not less than six months nor more than three years (R.C. 4507.16(B)(1)).

(2) Subject to following item (4), if, within six years of the offense, the offender has been convicted of or pleaded guilty to one of a number of specified federal, state, or local OMVI or OMVUAC offenses, similar offenses of another state, or one of a number of specified Ohio vehicle-related and alcohol-related offenses, the judge must impose a suspension of not less than one year nor more than five years (R.C. 4507.16(B)(2)).

(3) Subject to following item (4), if, within six years of the offense, the offender has been convicted of or pleaded guilty to two violations described in preceding item (2), the judge must impose a suspension of not less than one year nor more than ten years (R.C. 4507.16(B)(3)).

(4) If, within six years of the offense, the offender has been convicted of or pleaded guilty to three or more violations described in preceding item (2), or if the offender previously has been convicted of or pleaded guilty to 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 impose a suspension for a period of time set by the court but not less than three years, and the judge may permanently revoke the offender's license, permit, or privilege (R.C. 4507.16(B)(4)).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-09-99	p. 1462

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