



H.B. 109

124th General Assembly
(As Introduced)

Reps. Ford, Key, Cirelli, Hartnett, Britton, Barrett, Perry, Fedor, Jerse, Redfern, Carano, Allen, Latell

BILL SUMMARY

- Requires the imposition of an administrative license suspension for a person's life if the person refuses a chemical test under the Implied Consent Law to determine the alcohol concentration in the person's system and either has refused four or more previous requests to consent to a chemical test or has a combined total of four or more previous refusals to consent to a chemical test and prior convictions of specified alcohol-related motor vehicle statutes or ordinances.
- Requires the imposition upon a person of an administrative license suspension of two years (the accident results in serious physical harm to a person) or five years (the accident results in the death of a person) if the person refuses a chemical test under the Implied Consent Law to determine the alcohol concentration in the person's system and was involved in an accident while operating a vehicle during the period of time to which the chemical test applies.
- Requires the imposition of an administrative license suspension for a person's life if the person consents to a chemical test under the Implied Consent Law, the test indicates that the person had a prohibited concentration of alcohol in the person's system, and the person has been convicted, within six years of the date the test was conducted, of four or more violations of specified alcohol-related motor vehicle statutes or ordinances.

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CONTENT AND OPERATION

State OMVI and implied consent

R.C. 4511.19(A) prohibits a person from operating a vehicle, streetcar, or trackless trolley within Ohio, if the person is under the influence of alcohol, a drug of abuse, or both or the person has a prohibited concentration of alcohol in the person's blood, breath, or urine. (See **COMMENT 1** for a more complete description of the prohibition and an overview of the penalties.)

If a person operates a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking within Ohio and is arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or both (hereafter "under the influence") or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine (hereafter "with a prohibited concentration of alcohol"), existing law deems the person to have given consent to a chemical test or tests of the person's blood, breath, or urine for the purpose of determining the alcohol, drug, or alcohol and drug content of the person's blood, breath, or urine. The chemical test or tests must be administered at the request of a police officer having reasonable grounds to believe the person to have been operating a vehicle upon such a highway or property while under the influence or with a prohibited concentration of alcohol. The law enforcement

agency by which the officer is employed must designate which of the tests must be administered. (R.C. 4511.191(A).)¹

Administrative license suspension

Overview

If a person refuses to submit to the chemical test or if the person submits to the chemical test and that test indicates that the person has a prohibited concentration of alcohol in the person's blood, breath, or urine, the person is subject to an "administrative license suspension." If the administrative license suspension was imposed because the person refused to consent to the chemical test, its duration depends on the number of times the person has previously refused to submit to a chemical test within the previous five years. If the administrative license suspension was imposed because the chemical test indicates that the person has a prohibited concentration of alcohol in the person's blood, breath, or urine, its duration depends on the number of times the person had been convicted of specified alcohol-related motor vehicle offenses within the preceding six years. The bill revises the methods for determining the duration of the administrative license suspension.

Refusal to submit to chemical test

Existing law. Upon receipt of a sworn report of an arresting officer completed and sent to the Registrar and a court (hereafter "sworn report") in regard to a person who refused to take the designated chemical test, the Registrar must enter into the Registrar's records the fact that the arresting officer suspended the person's driver's or commercial driver's license or permit or nonresident operating privilege and the period of the suspension, as determined below (R.C. 4511.191(E)(1)):

(1) If the arrested person, within five years of the date on which the person refused the request to consent to the chemical test, had not refused a previous request of that type, the period of suspension is one year. The Registrar must deny to a nonlicensed resident the issuance of a license or permit for one year after the alleged violation.

(2) If the arrested person, within five years of the date on which the person refused the request to consent to the chemical test, had refused one previous request of that type, the period of suspension or denial is two years.

¹ A person who is dead or unconscious, or who is otherwise in a condition rendering the person incapable of refusal, is deemed not to have withdrawn consent, and the test or tests may be administered, subject to the Coroner's Law (R.C. 4511.191(B)).

(3) If the arrested person, within five years of the date on which the person refused the request to consent to the chemical test, had refused two previous requests of that type, the period of suspension or denial is three years.

(4) If the arrested person, within five years of the date on which the person refused the request to consent to the chemical test, had refused three or more previous requests of that type, the period of suspension or denial is five years.

The suspension or denial must continue for the entire one-year, two-year, three-year, or five-year period, subject to a statutorily prescribed appeal process and subject to termination as described below under "**Background existing law—Termination of the administrative license suspension**" (R.C. 4511.191(E)(2)).

Operation of the bill. The bill adds three new tiers of administrative license suspensions. The bill does not change the existing tiers of administrative license suspensions but does make them subject to the three new tiers. Therefore, if the circumstances of a case satisfy one of the existing tiers and one of the new tiers, the new tier controls. (R.C. 4511.191(E)(1)(a) to (d).) The new tiers are as follows (R.C. 4511.191(E)(1)(e) to (g)):

(1) If the arrested person has refused four or more previous requests to consent to a chemical test, the period of suspension or denial is for the person's life.

(2) If the arrested person has a combined total of four or more previous refusals to consent to a chemical test and prior convictions of specified statutes or ordinances (see paragraph (2) of "**Submission to and failure to pass chemical test—Existing law,**" below), the period of the suspension or denial is for the person's life.

(3) If the arrested person was involved in an accident while operating the vehicle during the period of time to which the chemical test applies and if paragraphs (2) and (3) do not apply, the period of suspension or denial is (a) two years if the accident results in serious physical harm to a person or (b) five years if the accident results in the death of a person. If the arrested person also is subject to a period of suspension or denial under existing law, the court must impose the longest period of suspension or denial required under this paragraph or existing law.

The suspension or denial must continue for the entire two-year, five-year, or lifetime period and is subject to existing law's statutorily prescribed appeal process and termination procedures below (R.C. 4511.191(E)(2)).

Submission to and failure to pass chemical test

Existing law. Upon receipt of a sworn report from the arresting officer in regard to a person whose test results indicate that the person had a prohibited concentration of alcohol at the time of the alleged offense, the Registrar must enter into the Registrar's records the fact that the arresting officer suspended the person's driver's or commercial driver's license or permit or nonresident operating privilege and the period of the suspension. The suspension or denial is for whichever of the following periods that applies (R.C. 4511.191(F)):

- (1) Generally, 90 days;
- (2) One year, if the person has been convicted, within six years of the date the test was conducted, of a violation of one of the following:
 - (a) State OMVI or OMVUAC or a municipal ordinance relating to operating a vehicle while under the influence or with a prohibited concentration of alcohol in the blood, breath, or urine;
 - (b) Involuntary manslaughter if the basis of the offender's offense was state OMVI or OMVUAC or a substantially equivalent municipal ordinance;
 - (c) Aggravated vehicular homicide or aggravated vehicular assault resulting from state OMVI or a substantially equivalent municipal ordinance;
 - (d) Aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, vehicular assault, or a substantially similar municipal ordinance, 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;
 - (e) A statute or ordinance of a foreign jurisdiction that is substantially similar to state OMVI or OMVUAC;
- (3) Two years, if the person has been convicted, within six years of the date the test was conducted, of two violations of a statute or ordinance described in paragraph (2), above;
- (4) Three years, if the person has been convicted, within six years of the date the test was conducted, of *more than two* violations of a statute or ordinance described in paragraph (2), above.

Operation of the bill

The bill increases the license suspension if a person has been convicted of *four or more violations* of a statute or ordinance described in paragraph (2) of

"Existing law." Under the bill, that period of suspension is for the person's life. (R.C. 4511.191(F)(4) and (5).)

Background existing law

Duties of arresting officer

Any person under arrest for operating a vehicle while under the influence or for operating a vehicle with a prohibited concentration of alcohol must be advised at a police station, or at a hospital, first-aid station, or clinic to which the person has been taken for first-aid or medical treatment, of both the consequences of the person's refusal to submit upon request to the chemical test and the consequences of the person's submission to the chemical test if the person is found to have a prohibited concentration of alcohol. The advice must be in written form containing specified information and must be read to the person and witnessed. (R.C. 4511.191(C)(1).)

If a police officer does not ask the person to submit to the designated chemical test, the arresting officer must seize the Ohio or out-of-state driver's or commercial driver's license or permit of the person and immediately forward the seized license or permit to the court in which the arrested person is to appear on the charge for which the person was arrested (R.C. 4511.191(D)(1)).²

If a police officer asks the person to submit to a designated chemical test and is advised of the consequences of the person's refusal or submission and if the person either refuses to submit to the designated chemical test or the person submits to the designated chemical test and the test results indicate that the person at the time of the alleged offense had a concentration of alcohol in the person's system that is prohibited by law (see **COMMENT 1**), the arresting officer must do all of the following (R.C. 4511.191(D)(1) and (2)):

(1) On behalf of the Registrar, serve a notice of suspension upon the person that advises the person that, independent of any penalties or sanctions imposed upon the person, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended, that the suspension takes effect immediately, that the suspension will last at least until the person's initial appearance on the charge that will be held within five days after the date of the

² *If the arrested person does not have the person's driver's or commercial driver's license or permit on the person's self or in the person's vehicle, the arresting officer must order the arrested person to surrender it to the law enforcement agency that employs the officer within 24 hours after the arrest. Upon the surrender, the officer's employing agency immediately must forward the license or permit to the court in which the arrested person is to appear on the charge for which the person was arrested. (R.C. 4511.191(D)(1).)*

person's arrest or the issuance of a citation to the person, and that the person may appeal the suspension at the initial appearance; seize the person's license or permit; and immediately forward the seized license or permit to the Registrar;³

(2) Verify the person's current residence and, if it differs from that on the person's license or permit, notify the Registrar of the change;

(3) In addition to forwarding the arrested person's license or permit to the Registrar, send to the Registrar and the court in which the arrested person is to appear on the charge for which the person was arrested, within 48 hours after the person's arrest, a sworn report that includes statutorily specified statements. (See COMMENT 2.)

Termination of the administrative license suspension

A suspension of a driver's or commercial driver's license or permit, a suspension of a person's nonresident operating privilege, or a denial of a driver's or commercial driver's license or permit pursuant to the administrative license suspensions must be terminated by the Registrar upon receipt of notice of the person's entering a plea of guilty to, or of the person's conviction of, operating a vehicle while under the influence or with a prohibited concentration of alcohol, if the offense for which the plea is entered or that resulted in the conviction arose from the same incident that led to the suspension or denial. The Registrar must credit against any judicial suspension of a person's license or permit or nonresident operating privilege any time during which the person serves a related administrative suspension. (R.C. 4511.191(K).)

Return of license or permit

At the end of an administrative or judicial suspension period and upon the request of the person whose driver's or commercial driver's license or permit was suspended and who is not otherwise subject to suspension, revocation, or disqualification, the Registrar must return the license or permit to the person upon the person's compliance with both of the conditions specified below (R.C. 4511.191(L)):

³ *If the arrested person does not have the person's license or permit on the person's self or in the person's vehicle, the arresting officer must order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the service of the notice of suspension. Upon the surrender, the officer's employing agency immediately must forward the license or permit to the Registrar. (R.C. 4511.191(D)(1).)*

(1) A showing by the person that the person has proof of financial responsibility, an adequate liability insurance policy, or satisfactory proof that the person is able to respond in damages in a statutorily specified amount;

(2) Payment by the person of a license reinstatement fee of \$425 to the Bureau of Motor Vehicles.

COMMENT

1. State OMVI Law

Prohibition

Under existing law, 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 (R.C. 4511.19(A)):

- (1) The person is under the influence of alcohol, a drug of abuse, or both.
- (2) The person has a concentration of .10 of one per cent or more but less than .17 of one per cent by weight of alcohol in his or her blood.
- (3) The person has a concentration of .10 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of his or her breath.
- (4) The person has a concentration of .14 of one gram or more but less than .238 of one gram by weight of alcohol per 100 milliliters of his or her urine.
- (5) The person has a concentration of .17 of one per cent or more by weight of alcohol in his or her blood.
- (6) The person has a concentration of .17 of one gram or more by weight of alcohol per 210 liters of his or her breath.
- (7) The person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of his or her urine.

State OMVI penalty chart

The following chart provides an overview of the penalties for a person who violates the state OMVI prohibitions (R.C. 4511.99(A) and 4507.16(B)):

First offense	Low end or under the influence	High end
Offense Class	M1	M1
Mandatory term	3 consecutive days	6 consecutive days or 3 consecutive days plus 3 consecutive days of drivers' intervention program
Alternative to mandatory term	Drivers' intervention program	None
Mandatory fine	\$250 - \$1,000	\$250 - \$1,000
Drivers intervention program (in addition to other penalties)	Possible	Possible
Alcohol or drug addiction treatment	Possible	Possible
Vehicle treatment	n/a	n/a
Driver's license treatment	Suspend for 6 months to 3 years	Suspend for 6 months to 3 years

Second offense (1 prior in past six years)	Low end or under the influence	High end
Offense Class	M1	M1
Mandatory term	10 consecutive days	20 consecutive days
Alternative to mandatory term	5 consecutive days of imprisonment plus at least 18 consecutive days of EMHA (total cannot exceed 6 months)	10 consecutive days of imprisonment plus at least 36 consecutive days of EMHA (total cannot exceed 6 months)
Mandatory fine	\$350 to \$1,500	\$350 to \$1,500
Drivers intervention program (in addition to other penalties)	Possible	Possible
Alcohol or drug addiction treatment	Possible	Possible
Vehicle treatment	Immobilized for 90 days	Immobilized for 90 days
Driver's license treatment	Suspend for 1 to 5 years	Suspend for 1 to 5 years



Third offense (2 priors in past six years)	Low end or under the influence	High end
Offense Class	Misdemeanor with up to 1 year jail possible	Misdemeanor with up to 1 year jail possible
Mandatory term	30 consecutive days	60 consecutive days
Alternative to mandatory term	15 consecutive days of imprisonment plus at least 55 consecutive days of EMHA (total cannot exceed 1 year)	30 consecutive days of imprisonment plus at least 110 consecutive days of EMHA (total cannot exceed 1 year)
Mandatory fine	\$550 to \$2,500	\$550 to \$2,500
Alcohol or drug addiction treatment	Required	Required
Vehicle treatment	Forfeited	Immobilized for 180 days ⁴
Driver's license treatment	Suspend for 1 to 10 years	Suspend for 1 to 10 years

Fourth offense (3 priors in past six years) (No prior felony state OMVI conviction)	Low end or under the influence	High end
Offense Class	F4, but up to 30 months prison possible	F4, but up to 30 months prison possible
Mandatory term	60 consecutive days, either prison term or local incarceration	120 consecutive days, either prison term or local incarceration
Alternative to mandatory term	None, but EMHA may be imposed in addition to mandatory term	None, but EMHA may be imposed in addition to mandatory term
Mandatory fine	\$800 to \$10,000	\$800 to \$10,000
Alcohol or drug addiction treatment	Required	Required
Vehicle treatment	Forfeited	Forfeited
Driver's license treatment	Suspend for at least 3 years and may permanently revoke	Suspend for at least 3 years and may permanently revoke

⁴ Because Am. H.B. 80 and Am. Sub. S.B. 22 of the 123rd General Assembly progressed through the General Assembly concurrently, the high end penalties created in Am. Sub. S.B. 22 do not reflect the amendments in Am. H.B. 80 that enhance the penalty on a third offense from impoundment for 180 days to forfeiture of the vehicle.

Any prior felony state OMVI conviction	Low end or under the influence	High end
Offense Class	F3	F3
Mandatory term	60 consecutive days of imprisonment as prison term	120 consecutive days of imprisonment as prison term
Alternative to mandatory term	None	None
Mandatory fine	\$800 to \$10,000	\$800 to \$10,000
Alcohol or drug addiction treatment	Required	Required
Vehicle treatment	Forfeited	Forfeited
Driver's license treatment	Suspend for at least 3 years and may permanently revoke	Suspend for at least 3 years and may permanently revoke

Penalty chart terms

As used in the OMVI penalty chart:

"Low end or under the influence" means that any of the following apply to the person who pleaded guilty to or was convicted of state OMVI:

(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 one per cent or more but less than .17 of one per cent by weight of alcohol in the person's blood.

(3) The person has a concentration of .10 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath.

(4) The person has a concentration of .14 of one gram or more but less than .238 of one gram by weight of alcohol per 100 milliliters of the person's urine.

"High end" means that any of the following apply to the person who pleaded guilty to or was convicted of state OMVI:

(1) The person has a concentration of .17 of one per cent or more by weight of alcohol in the person's blood.

(2) The person has a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath.

(3) The person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine.

"Priors" means the conviction of the following vehicle-related and alcohol-related offenses:

(1) State OMVI or state OMVUAC.

(2) Any municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or both.

(3) A municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine.

(4) Involuntary manslaughter in a case in which the offense that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's commission of the offense of voluntary manslaughter was state OMVI or state OMVUAC or a violation of a substantially equivalent municipal ordinance or included, as an element of that offense, the offender's operation or participation in the operation of a snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or both.

(5) In certain circumstances aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or a municipal ordinance substantially similar to any of those offenses.⁵

(6) 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.

"EMHA" means electronically monitored house arrest.

2. Arresting officer's sworn statement

The sworn statement described above in "Background existing law—Duties of arresting officer" must contain all of the following statements (R.C. 4511.191(D)(1)):

⁵ Because Sub. S.B. 107 and Am. Sub. S.B. 22 of the 123rd General Assembly progressed through the General Assembly concurrently, the penalties for the new high end state OMVI do not reflect the changes to the Revised Code made by Sub. S.B. 107, while the low end penalties do.

(1) That the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was operating a vehicle upon a highway or public or private property used by the public for vehicular travel or parking within Ohio while under the influence or with a prohibited concentration of alcohol;

(2) That the person was arrested and charged with operating a vehicle while under the influence or with operating a vehicle with a prohibited concentration of alcohol;

(3) That the officer asked the person to take the designated chemical test, advised the person of the consequences of submitting to the chemical test or refusing to take the chemical test, and gave the person the statutorily prescribed form;

(4) That the person refused to submit to the chemical test or that the person submitted to the chemical test and the test results indicate that the person's blood contained a prohibited concentration of alcohol at the time of the alleged offense;

(5) That the officer served a notice of suspension upon the person.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-20-01	p. 165

H0109-I.124/jc