



H.B. 307

124th General Assembly
(As Introduced)

Reps. Ford, Fedor

BILL SUMMARY

- Requires a motor vehicle operator to submit to a chemical test of the person's blood, breath, or urine if the operator is stopped by a police officer who observes an open alcoholic beverage container in the vehicle or the operator is arrested for OMVI and either admits to consuming alcoholic beverages or is involved in an accident that results in death or serious physical harm to a person.

CONTENT AND OPERATION

Alcohol and drug testing under the Implied Consent Law

Arrest for OMVI and request to submit to a chemical test for alcohol

The existing Implied Consent Law (R.C. 4511.191) provides that any person who operates a vehicle on 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 tests of blood, breath, or urine for the purpose of determining its alcohol and/or drug content if arrested for either of the following:

- (1) Operating a vehicle while under the influence alcohol or a drug of abuse;
- (2) Operating a vehicle with a prohibited concentration of alcohol in the person's blood, breath, or urine.¹ (Both hereinafter referred to as "OMVI.")

¹ The prohibited concentrations are .10 of one gram or more by weight of alcohol per 210 liters of a person's breath, .10 of one per cent or more by weight of alcohol of a person's blood, or .14 of one gram or more by weight of alcohol per 100 milliliters of a person's urine.

The chemical test is administered at the request of a police officer who has reasonable grounds to believe that the person operated a vehicle under the above-described circumstances and thereby committed the offense of OMVI. The law enforcement agency that employs the officer designates the test to be administered. (R.C. 4511.191(A).)

Any person who is arrested for OMVI must be advised at a police station or medical facility (if the person needs medical treatment) of both the consequences of the person's refusal to submit upon request to the designated chemical test and 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. This information is contained in a written form that is read to the person. The form also contains a statement that the form was shown to the arrested person and read to the person in the presence of the arresting officer and at least one other prescribed witness, who certifies these circumstances by signing the form. (R.C. 4511.191(C)(1) and (2)(a).)

If a person under arrest for OMVI either refuses to submit to the designated chemical test or submits to the test and the test results indicate a prohibited concentration of alcohol, the arresting officer must take a number of actions, including all of the following:

(1) On behalf of the Registrar of Motor Vehicles, serve a suspension notice upon the person immediately suspending the person's license, permit, or nonresident operating privilege. The suspension lasts at least until the person's initial appearance on the charge (which must be held within five days after the date of the person's arrest or the issuance of a citation to the person), at which time the person may appeal the suspension;²

(2) Seize the person's Ohio or out-of-state license or permit and immediately forward it to the Registrar. If the arrested person does not have the license or permit with him, the arresting officer must order the person to surrender it to the officer's law enforcement agency within 24 hours after the notice of suspension is served;

(3) Verify the person's current residence;

² *This component of the Implied Consent Law is known as the Administrative License Suspension provision (ALS). In any given case, the suspension period is longer for the person who refuses to submit to the chemical test than it is if the same person submits to the test and is found to have a prohibited concentration of alcohol in the blood, breath, or urine. The actual length of the Administrative License Suspension is dependent upon the ultimate disposition of the underlying OMVI charge.*

(4) Within 48 hours after the person's arrest, send to the Registrar a sworn report that includes all of the following statements:

--That the officer had reasonable grounds to believe that, at the time of the arrest, the person was 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;

--That the person was arrested and charged with OMVI;

--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 prescribed form;

--That the person refused to submit to the chemical test or that the person submitted to the chemical test and the test results indicate a prohibited concentration of alcohol at the time of the alleged offense;

--That the officer served the required notice of suspension upon the person. (R.C. 4511.191(D)(1).)

Appeal of suspension

Current law permits the person to appeal the ALS at the person's initial appearance. If the person appeals the ALS at that time, the scope of the appeal is limited to determining whether one or more of the following conditions have not been met:

(1) Whether the law enforcement officer had reasonable ground to believe the arrested person was 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, and whether the person was in fact placed under arrest;

(2) Whether the law enforcement officer requested the person to submit to the designated chemical test;

(3) Whether the arresting officer informed the person of the consequences of refusing to be tested or of submitting to the test;

(4) Whichever of the following is applicable:

--Whether the person refused to submit to the chemical test;

--Whether the chemical test results indicate that the person's blood, breath, or urine contained a prohibited concentration of alcohol at the time of the alleged offense. (R.C. 4511.191(H).)

Operation of the bill

Certain persons who are required to submit to a chemical test

The bill retains all of the existing provisions of the Implied Consent Law, but enacts an additional provision that *requires* a person, in certain circumstances, to submit to a chemical test to determine the alcohol content of the person's blood, breath, or urine.

Under the bill, any person who operates a vehicle and who is arrested for OMVI *must* submit to such a chemical test in either of the following circumstances:

(1) The person admits to a police officer that the person consumed alcoholic beverages within the two-hour period immediately preceding the person's arrest;

(2) The person is involved in an accident or collision while operating the vehicle and the accident or collision results in death or serious physical harm to a person. (R.C. 4511.191(A)(2)(a).)

In addition, the bill provides that any person who operates a vehicle also *must* submit to a chemical test for determining the alcohol content of the person's blood, breath, or urine if the person is stopped by a police officer for any reason and the police officer sees an opened container of beer or intoxicating liquor in the vehicle. (R.C. 4511.191(A)(2)(a).)

The chemical test must be administered at the request of a police officer to whom the vehicle operator admitted consuming alcoholic beverages within the prescribed two-hour period or who has reasonable grounds to believe that the person was operating the vehicle at the time of the applicable accident or collision, or who saw an opened container of beer or intoxicating liquor in the vehicle after stopping the person. As in current law, the law enforcement agency that employs the police officer designates which test is administered. If the person refuses to submit upon request to the chemical test, the police officer is required to employ whatever "reasonable means" are necessary to ensure that the person submits to the chemical test. If the chemical test performed is a blood test, the procedure for performing the blood test is the same as provided in current law. (R.C. 4511.191(A)(2)(a).)

If test results under the bill's provisions indicate that the person had a prohibited concentration of alcohol at the time of the arrest, accident or collision, or stop, the bill provides both of the following:

(1) The police officer is required to arrest the person for state OMVI (if not already under arrest) and to take the same actions the Implied Consent Law requires a police officer to take when a person arrested for OMVI submits to a chemical test and the test results indicate a prohibited concentration of alcohol.

(2) The person is subject to the same requirements and penalties as a person who is under arrest for OMVI under current law, submits to a test, and the test results indicate a prohibited concentration of alcohol. (R.C. 4511.191(A)(2)(b).)

Conforming changes to Implied Consent Law

The bill makes certain provisions of the current Implied Consent Law inapplicable (and modifies others) with respect to the people whom the bill *requires* to submit to testing. For example, a law enforcement officer is *not* required to inform such a person of the consequences of refusing to submit to the chemical test, since the person does not have a choice in the matter (R.C. 4511.191(C)(1)).

The bill also modifies some aspects of the sworn report that the arresting law enforcement officer must submit to the Registrar. It must indicate that the officer had reasonable grounds to believe or knew that, at the time of the person's arrest for OMVI, the person was operating the vehicle and admitted consuming alcoholic beverages within the two-hour period immediately preceding the person's arrest, had reasonable grounds to believe or knew that the person was operating the vehicle at the time of an accident or collision and that the accident or collision resulted in death or serious physical harm to a person, or that the officer saw an opened container of beer or intoxicating liquor in the person's vehicle after stopping the person (R.C. 4511.191(D)(1)(c)(i)). The report relative to such a person does not have to indicate that the officer asked the person to submit to the chemical test, advised the person of the consequences of submitting or refusing to submit to the chemical test, or gave the person the form (R.C. 4511.191(D)(1)(c)(iii)). Finally, the report need not indicate whether the person refused to submit or did submit to the chemical test (R.C. 4511.191(D)(1)(c)(iv)). In all these instances, the sworn report instead must merely indicate that the bill's new provisions relating to the required testing were applied to the person.

Similarly, if a person who is required by the bill to submit to a chemical test appeals the immediate suspension, the bill provides that the scope of the appeal will be slightly different in the case of such a person versus the case of a person

who has a choice under the Implied Consent Law whether or not to submit to the test (R.C. 4511.191(H)(1)(a)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-20-01	p. 706

h0307-i.124/kl

