Michael J. O'Neill *Legislative Service Commission*

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Sens. Oelslager, Mead

BILL SUMMARY

SUSPENSION PROVISIONS

Reorganization, relocation, and classification of suspension provisions

- Creates a new chapter of the Revised Code (R.C. Chapter 4510.) governing suspensions of a driver's or commercial driver's license or permit or nonresident operating privilege and relocates to that chapter procedures for suspensions, including the provisions related to suspending a driver's or commercial driver's license or permit or nonresident operating privilege based on the accumulation of points on a person's driving record.

Classification of suspensions

- Reorganizes and relocates provisions requiring the imposition of a judicial or administrative suspension of a driver's or commercial driver's license or permit or nonresident operating privilege from consolidated suspension sections governing numerous types of offenses and acts to the section of law that establishes the criminal prohibition or that specifies the act for which the particular suspension is imposed.

- Assigns most judicial suspensions a numerical classification code ranging from Class 1 to Class 7 and assigns administrative suspensions an alphabetical code ranging from Class A to Class F.

- Eliminates driver's license revocations and forfeitures and replaces them with license suspensions or cancellations.

Limited driving privileges

- Expands the concept of occupational driving privileges that may be granted during the time a driver's or commercial driver's license or permit or nonresident operating privilege is suspended by renaming the privileges as "limited driving privileges" and specifying that they may be granted for occupational, educational, vocational, or medical purposes, taking the driver's or commercial driver's license examination, attending court-ordered treatment and, for juveniles, practicing driving in specified circumstances.

- Generally allows limited driving privileges for all court-imposed suspensions if not prohibited by statute, allows privileges for administrative suspensions only if allowed by statute and granted by a court, and modifies some of the restrictions applicable to existing circumstances in which privileges are authorized.

- Reorganizes and relocates the law regarding ignition interlock devices, expands that law to pertain to all "immobilizing and disabling devices," and provides for the use of prototype devices.

- Expands the circumstances in which a court may grant occupational driving privileges, renamed limited driving privileges, to a person whose driver's license or permit is suspended for convictions or adjudications of specified violations of law committed before the person attains 18 years of age, and specifically permits a grant of limited driving privileges to such a person to include the person's operation of a vehicle, under specified circumstances, to practice driving.

- Provides exceptions under provisions otherwise requiring the use of restricted license plates or immobilizing or disabling devices as a condition of limited driving privileges, for vehicles owned by an employer or out-of-state vehicles.

Reinstatement

- Permits a municipal or county court that determines in a pending case that an offender cannot reasonably pay reinstatement fees due and owing by the offender relative to a suspension to: (1) establish a reasonable payment plan for the offender of not less than $50 per month, or (2) permit the offender to operate a motor vehicle until a future date upon

which all reinstatement fees must be paid in full (not exceeding 180 days), with the operating privileges being solely for the purpose of permitting the offender occupational or "family necessity" privileges in order to reasonably acquire the delinquent reinstatement fees.

- Expands the prohibition that constitutes the offense of failure to reinstate a suspended license.

- Modifies provisions regarding a court's authority to require a person whose license has been suspended by the court to successfully complete a remedial driving course as a condition for the return of full driving privileges after the suspension ends.

- Establishes criteria and procedures for the modification or termination of a license suspension for life or for a period in excess of 15 years.

Operating a motor vehicle without a valid license and related provisions

- Establishes a graduated scale for the penalty for operating a motor vehicle without a valid license.

- Relocates the current offense of "driving under OMVI suspension or revocation," includes within the offense the current prohibition against operating a vehicle while under a Vehicle Implied Consent Law or an R.C. 4511.196 suspension, renames the offense as "driving under OVI suspension," expands and modifies some of its elements, extends to six years the "look back" period used in determining the sentence for the offense, enacts a new sentencing structure for the offense, specifies that the existing vehicle immobilization, impoundment, and forfeiture provisions apply only if the involved vehicle is registered in the offender's name, relocates the pretrial vehicle seizure and retention provisions applicable regarding the offense, and modifies the procedures to conform them to the bill's vehicle immobilization, impoundment, and forfeiture provision changes.

- Modifies some of the provisions regarding financial responsibility law suspensions and the offense of, and penalties for, driving under a financial responsibility law suspension (including requiring a judicial license suspension).

- Requires the immobilization of a vehicle involved in a driving under suspension violation, other than a suspension described in either of the two preceding paragraphs, and the impoundment of the vehicle's license plates if the vehicle is registered in the offender's name and requires the criminal forfeiture of such a vehicle on a third offense of such a driving under suspension violation.

- Consolidates and relocates the existing prohibition against operating a vehicle during a suspension imposed other than under the Financial Responsibility Law and the existing prohibition against operating a vehicle in violation of a license restriction, and renames the offense "driving under suspension or in violation of a license restriction."

"Points"

- Relocates the law governing suspensions for the accumulation of "points" against a person's driving record and revises the assessment of points for speed limit violations, with zero points being assessed when the speed does not exceed the lawful speed limit by more than five miles per hour.

- Eliminates the duty of the Registrar of Motor Vehicles to require a person with seven points against the person's license to take the driver's exam, a physical exam, or both, and requires the Registrar, when the Registrar orders a person to take the driver's exam, a physical exam, or both when the Registrar has good cause to believe that the person should not have a driver's license, to give the person 30 days' notice instead of five days' notice of the requirement to take the exam.

Suspensions

- Establishes a graduated scale of license suspensions for the offense of "failure to comply with an order or signal of a police officer."

- Expands an existing provision that requires a sentencing court to suspend the driver's or commercial driver's license or permit of a person convicted of a municipal ordinance violation that is substantially equivalent to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter for the length of time that a suspension would be imposed for the similar state offense so that the provision also applies regarding municipal ordinance violations that are substantially equivalent to the

state offense of soliciting another to engage in sexual activity for hire, state OVI, or state OVUAC.

- Eliminates the authority for a court to impose a license suspension on a person who violates a requirement or prohibition of the court concerning occupational driving privileges or a condition of probation granted for an OMVI violation.

- Eliminates the judicial license suspension for any crime punishable as a felony under the Ohio motor vehicle laws or any other felony in the commission of which a motor vehicle is used.

OMVI AND OMVUAC

Prohibitions and penalties

- Adds two additional prohibitions to the offense of state OMVI (which it renames state OVI) that prohibit a person from operating a vehicle, streetcar, or trackless trolley in Ohio if the person: (1) has a concentration of .12 of one per cent or more but less than .204 of one per cent by weight per unit volume of alcohol *in the person's blood serum or plasma*, or (2) has a concentration of .204 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*.

- Relocates to the section that contains the offense of state OVI the general penalty provisions that apply to the offense, provides that the existing vehicle immobilization and impoundment sanctions and vehicle forfeiture sanctions apply only if the vehicle is registered in the offender's name, conforms the existing driver's license suspension sanctions to other provisions of the bill that consolidate driver's license suspension laws and permits limited driving privileges in accordance with those other provisions, makes certain other changes in the penalties for the offense, and simplifies and consolidates the penalty provisions for the offense.

- Adds an additional prohibition to the offense of state OMVUAC (which it renames state OVUAC) that prohibits a person under 21 years of age from operating a vehicle, streetcar, or trackless trolley in Ohio if the person has a concentration of .03 of one per cent but less than .12 of one per cent by weight per unit volume of alcohol *in the person's blood serum or plasma*.

- Relocates to the section that contains the offense of state OVUAC the general penalty provisions that apply to the offense, conforms the existing driver's license suspension sanctions to other provisions of the bill that consolidate driver's license suspension laws, makes certain other changes in the penalties for the offense, and simplifies and consolidates the penalty provisions for the offense.

Definitions

- Defines the term "operate," for purposes of R.C. Chapter 4511., including state OVI and state OVUAC, as "to cause or have caused movement of a vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking."

- Clarifies that the R.C. Chapters 4511. and 4512. definition of "vehicle" includes bicycles moved by human power.

Procedures

- Revises the procedures relative to the taking of a chemical test under the state's Vehicle Implied Consent Law and to the use of those tests in a court proceeding, permits the use of certified lab reports as *prima facie* proof of their contents unless the person accused objects, specifies that the qualified immunity from civil liability for medical personnel who withdraw blood and for any medical facility at which it is withdrawn is not available if the person engages in willful or wanton misconduct, and extends that immunity to also cover phlebotomists.

- Specifies that: (1) the current Ohio Traffic Rules do not apply to felony state OVI violations, (2) except as described in clause (3), the Rules of Criminal Procedure apply to felony state OVI violations, and (3) if, on or after its effective date, the Supreme Court modifies the Rules to provide procedures to govern felony state OVI violations, the modified Rules will apply to felony state OVI violations.

- Specifies that the vehicle immobilization, impoundment, and forfeiture provisions that apply regarding repeat convictions of state OVI, municipal OMVI, and driving under suspension, and to convictions of "permitting the operation of a vehicle by a person with no legal right to operate a vehicle" (which it renames "wrongful entrustment of a motor vehicle"), apply regarding a vehicle used in the offense only if the vehicle

is registered in the name of the offender and, related to this, repeals the existing "innocent owner" exception to the provisions.

- Specifies that, if a vehicle is seized under existing pretrial seizure and retention provisions that apply in certain cases when a person is arrested for state OVI or municipal OVI, and the impoundment of the vehicle was not authorized under those provisions as amended by the bill, the court must order that the vehicle and its license plates be returned immediately to the arrested person or the vehicle owner, if different, and order that the state or a political subdivision served by the law enforcement officer who seized the vehicle pay all expenses and charges incurred in its removal and storage, and makes other modifications to those provisions.

- Modifies some of the provisions of the state's Vehicle Implied Consent Law, including the appeal procedures relative to a suspension under that Law, conforms the driver's license suspension provisions under that Law to other provisions of the bill that consolidate driver's license suspension laws, revises the authority to grant driving privileges during a suspension under that Law, simplifies some of the procedures that pertain to that Law, and relocates much of the substance of that Law from existing R.C. 4511.191 into several other sections.

- Extends the state's Vehicle Implied Consent Law to a person arrested for the new offense of "having physical control of a vehicle while under the influence" that it creates.

- Extends the time at which a judge, magistrate, or mayor may impose a suspension under R.C. 4511.196 upon a person accused of state OVI, state OVUAC, or a violation of a substantially equivalent municipal ordinance and whose driving will be a threat to public safety from the time of the person's initial appearance to any time prior to the adjudication on the merits of the charge resulting from the person's arrest, and extends the entire provision to also apply to a person accused of the new offense of "having physical control of a vehicle while under the influence" that it creates.

Related offenses

- Enacts the offense of "having control of a vehicle while under the influence," which prohibits a person from being in "physical control" of a vehicle, streetcar, or trackless trolley while under the influence of

alcohol, a drug of abuse, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol prohibited under state OVI, and extends the state's license reinstatement provisions, including the provisions imposing a $425 fee, to a person whose license is suspended for a conviction of the new offense.

- Modifies the elements of and penalties for the offense currently named "permitting the operation of a vehicle by a person with no legal right to operate a vehicle," relocates the offense from R.C. 4507.33 to R.C. 4511.203, renames the offense "wrongful entrustment of a motor vehicle," specifies circumstances in which it is *prima facie* evidence that a person knows or should know that a motor vehicle owned by or under the control of the person was operated in a manner to commit the offense, and modifies the pretrial vehicle seizure and retention provisions and the vehicle immobilization and forfeiture provisions applicable regarding the offense as previously described.

- Classifies the existing license suspensions required for the offense of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, vehicular assault, and involuntary manslaughter and generally retains the periods of "hard suspension" under those suspensions.

- In the offense of state watercraft OMVI, adds additional prohibitions that prohibit a person from operating or being in physical control of a vessel underway and from manipulating any water skis, aquaplane, or similar device on Ohio waters if the person has a concentration of .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma* or if the person is under 21 years of age and has a concentration of at least .03 of one per cent but less than .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*; extends the "look back period" for determining the penalty from five years to six years; modifies the list of prior convictions used in determining the offender's sentence; revises the existing procedures relative to the taking of a chemical test under the state's Watercraft Implied Consent Law and to the use of those tests in a court proceeding; permits the use of certified lab reports as *prima facie* proof of their contents unless the person accused objects; specifies that the qualified immunity from civil liability for medical personnel who

withdraw blood and for any medical facility at which it is withdrawn is not available if the person engages in willful or wanton misconduct; extends that immunity to phlebotomists; and makes conforming changes.

- Modifies some of the provisions of the existing Watercraft Implied Consent Law, and simplifies some of the procedures that pertain to that Law.

MISCELLANEOUS

- Permits a court to establish by local rule a reasonable security that can be posted by a traffic offender who is an Ohio resident and is not licensed to operate a motor vehicle or is a resident of a state that is not a member of the Nonresident Violator Compact, instead of requiring such a person to appear in court for the determination of a reasonable security.

- Requires certain fees charged in connection with the reinstatement of a driver's license to be paid to the Bureau of Motor Vehicles rather than to a court.

- Provides that a conviction for a violation of the Driver's License Law or the bill's new chapter dealing with driver's license suspensions generally are not previous or subsequent convictions for purposes of the definition of "first offender" in the criminal conviction record sealing law, specifies that felony motor vehicle convictions are previous or subsequent convictions for those purposes, and modifies the current list of traffic-related convictions that are considered previous or subsequent convictions to conform it to other changes made in the bill.

- Modifies the types of traffic offenses to which the criminal conviction record sealing law does not apply to conform it to other changes made in the bill.

- Provides that, if a person filed an application on or after March 31, 1999, for the sealing of a criminal conviction record, if the offense covered by the application was not excluded by law on the date it was filed from the scope of the conviction records sealing law, if the person withdrew the application prior to March 31, 2001, and if under a change in the law that occurred on March 23, 2000, the offense covered by the application now is excluded from the scope of the conviction records sealing law, the person may refile the application within 90 days after the bill's effective

date and have the application decided as if the exclusion enacted on March 23, 2000, had not been so enacted.

- Exempts from the commercial driver's license law a person engaged in the operation of a motor vehicle that is designed primarily for the transportation of goods and not persons, while that motor vehicle is being used for the occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise.

- Expands the state's Commercial Vehicle Implied Consent Law to refer to tests of a person's whole blood, blood serum, or blood plasma (instead of referring to a person's blood) and to permit phlebotomists to perform chemical tests under it and includes phlebotomists within the coverage of the existing qualified immunity provided for testers.

- Specifically prohibits operating a commercial driver training school without a valid license, provides a penalty for acting as a driver training instructor without a valid license, prohibits making a false statement on a driver training instructor license application, prohibits a driver training school from using vehicles that do not meet specified standards, and makes other changes to the law dealing with driver training schools.

- Regarding speeding offenses under state law: (1) reduces a second speeding violation within a one-year period from a misdemeanor of the fourth degree to a minor misdemeanor, and (2) reduces a third speeding violation within a one-year period from a misdemeanor of the third degree to a misdemeanor of the fourth degree.

- Alters the driver's license points system regarding points for speeding violations under state or municipal law by providing for the assessment of points only in the following ways: (1) if the speed of the violator exceeded the speed limit by 30 miles per hour or more, four points, (2) if the speed of the violator exceeded the speed limit of 55 miles per hour or more by more than ten miles per hour, two points, and (3) if the speed of the violator exceeded the speed limit of less than 55 miles per hour by more than five miles per hour, two points.

- Modifies the law that generally requires a person who is operating a vehicle, upon the approach of a public safety vehicle or coroner's vehicle equipped with a flashing, rotating, or oscillating light and the driver is

giving an audible signal, to yield the right-of-way and immediately drive to a position parallel to, and as close as possible to, the right edge or curb of the highway clear of any intersection so that the provision applies only *when it is practical for the person in question to immediately drive to such a position*.

- Reduces the mandatory fine required for a person convicted of illegally parking in a handicapped or disability parking space, if the person had a valid windshield placard, special license plate, or parking card but neglected to properly display it.

- Prohibits a person operating a motor vehicle displaying restricted license plates from knowingly disguising or obscuring the color of the restricted plate.

- Generally relocates the penalty provisions for all violations of any prohibition contained in R.C. Title XLV from the ".99" section to the section that actually sets forth the prohibition in question, and accordingly, generally repeals the ".99" sections.

- Delays the effect of its provisions until January 1, 2004, and specifies that its provisions are to apply only in relation to conduct and offenses committed on or after that date.

- Specifies that if money is appropriated or available for this purpose, the Attorney General must develop, print, and distribute training materials for the bill's implementation.

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CONTENT AND OPERATION

Reorganization, relocation, and classification of suspension provisions

The bill generally reorganizes and relocates both judicial and administrative procedures for suspending a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. The procedures, prohibitions, and general provisions relating to license suspensions are relocated to new Revised Code Chapter 4510. With very few exceptions, the suspensions are assigned a classification code; judicial suspensions are given a numerical classification code ranging from Class 1 to Class 7, and administrative suspensions by the Bureau of Motor Vehicles (BMV) or its

Registrar are given an alphabetical classification code ranging from Class A to Class F. The requirement that a suspension be imposed upon violation of a specific prohibition generally is relocated to the section of the Revised Code establishing the violation. For a comparison of the length of a suspension of a person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege under existing law and under the bill, see the accompanying chart in the Appendix. The bill eliminates license revocations and replaces them with license suspensions or cancellations. All of these changes are discussed in more detail in succeeding parts of this analysis.

Classifications of suspensions

In general, the bill classifies suspensions and relocates the provisions that specify the class of suspension required to be imposed for a violation of a specific prohibition to the section of the Revised Code establishing the substantive offense; it also revises the length of some of the suspensions. The bill does not classify suspensions imposed for violations of the Controlled Substance Law, under Chapter 2925., imposed in most circumstances upon children adjudicated unruly children, delinquent children, or juvenile traffic offenders, or imposed for a few other isolated violations.

Judicial suspension classifications

Under the bill, when a court elects or is required to suspend the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of any offender from a specified suspension class, for each of the following suspension classes, the court must impose a definite period of suspension from the range specified for the suspension class (R.C. 4510.02(A)):

(1) For a Class 1 suspension, a definite period for the life of the person subject to the suspension;

(2) For a Class 2 suspension, a definite period of three years to life;

(3) For a Class 3 suspension, a definite period of two to ten years;

(4) For a Class 4 suspension, a definite period of one to five years;

(5) For a Class 5 suspension, a definite period of six months to three years;

(6) For a Class 6 suspension, a definite period of three months to two years;

(7) For a Class 7 suspension, a definite period not to exceed one year.

In a new provision, the bill authorizes a court to require a person to successfully complete a remedial driving course as a condition for the return of full driving privileges after a suspension imposed by the court under the provisions described above or otherwise imposed by the court pursuant to law ends. (R.C. 4510.02(C).)

Administrative suspension classifications

Under the bill, when the BMV elects or is required to suspend the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of any person from a specified suspension class, for each of the following suspension classes, the period of suspension must be as follows (R.C. 4510.02(B)):

(1) For a Class A suspension, three years;

(2) For a Class B suspension, two years;

(3) For a Class C suspension, one year;

(4) For a Class D suspension, six months;

(5) For a Class E suspension, three months;

(6) For a Class F suspension, until conditions are met.

Unclassified suspensions

The bill specifies that, when a court or the BMV suspends the driver's license, temporary instruction permit, probationary driver's license, or nonresident operating privilege of any offender or person pursuant to any provision of law that does not provide for the suspension to be from a class described above under either "***Judicial suspensions***" or "***Administrative suspensions***," except as otherwise provided in the provision that authorizes or requires the suspension, the suspension is subject to and governed by new R.C. Chapter 4510. (R.C. 4510.02(D)).

General judicial suspensions

Existing law

Under existing law, the trial judge of any court of record must suspend for not less than 30 days or more than three years or revoke 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 any of the following (R.C. 4507.16(A)(1)(a) to (f)):

(1) Perjury or the making of a false affidavit under the Driver's Licensing Law, or any other Ohio law requiring the registration of motor vehicles or regulating their operation on the highway;

(2) Any crime punishable as a felony under the Ohio motor vehicle laws or any other felony in the commission of which a motor vehicle is used;

(3) Failing to stop and disclose identity at the scene of the accident when required by law or ordinance to do so;

(4) Street racing under state law or any substantially similar municipal ordinance;

(5) Willfully eluding or fleeing a police officer;

(6) Trafficking in cigarettes with the intent to avoid payment of the cigarette tax.

If a person is convicted of or pleads guilty to soliciting another to engage in sexual activity for hire, an attempt to commit such a violation, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to that offense and if the person used a motor vehicle in the violation, the trial judge of a court of record must suspend the person's driver's or commercial driver's license or permit for 30 days. In addition to suspensions or revocations of licenses, permits, or privileges, and all other penalties provided by law or by ordinance, the trial judge of any court of record must impose a suspended jail sentence not to exceed six months, if imprisonment was not imposed for the offense for which the person was convicted. (R.C. 4507.16(A)(3).)

Existing law also requires a judge to suspend, for a period of time specified in the Revised Code section that contains the offense or as otherwise specified (see "***State OMVI--state OVI***," "***State OMVUAC--state OVUAC***," and "***Vehicular homicide, vehicular assault, and involuntary manslaughter offenses***," below), the license or permit of a person convicted of state or municipal OMVI, state or municipal OMVUAC, or a vehicular homicide or vehicular assault offense under state law, and, in specified circumstances to revoke for life the license or permit of a person convicted of a vehicular homicide offense under state law or involuntary manslaughter (R.C. 2903.04, 2903.06, 2903.08, 4507.16(A)(2), 4507.16(B), 4507.16(D)(1), and 4507.16(G)).

Existing law prohibits any judge from suspending the first 30 days of a 30-day to three-year suspension of a driver's or commercial driver's license or permit or a nonresident operating privilege, or of a 30-day suspension, imposed for the violations described above (R.C. 4507.16(I)).

Existing law also authorizes a judge to issue an order prohibiting an offender from registering, renewing, or transferring the registration of any vehicle during the period that the offender's license, permit, or privilege is suspended or revoked, if the judge suspends or revokes the person's license, permit, or nonresident operating privilege under any of the above provisions. The court must promptly send a copy of the order to the Registrar. Upon receipt of such an order, neither the Registrar nor any deputy registrar may accept any application for the registration, registration renewal, or transfer of registration of any motor vehicle owned or leased by the person named in the order during the period that the person's license, permit, or privilege is suspended or revoked. When the period of suspension or revocation expires or if the Registrar is notified that the order is canceled, the Registrar or deputy registrar must accept the application for registration, registration renewal, or transfer of registration of the person named in the order. (R.C. 4507.16(A)(4).)

Under existing law, whenever any nonresident has been convicted of the offenses discussed above for which a license suspension may be imposed, or has forfeited bail to secure his appearance for trial, the clerk of court must forward to the Registrar a copy or transcript of the conviction or order forfeiture of bail (R.C. 4509.35). The Registrar must transmit a certified copy of the judgment, conviction, or order of bail forfeiture to the official in charge of licenses and registrations in the state that the defendant is from (R.C. 4509.36, not in the bill).

Operation of the bill

In general, the bill relocates the license, permit, or privilege suspension requirements discussed above to the section of law establishing the criminal prohibition for which the suspension is imposed and revises them to use the bill's license classification system (R.C. 4549.02, 4549.021, 4511.251, 2921.331, 2907.24, and 5743.99(F) and repeal of R.C. 4507.16(A)(1)(c), (d), (e), and (f); also see the last paragraph of this part of the analysis). It retains in R.C. 4507.16 the judicial suspension for perjury or the making of a false affidavit under the Driver's Licensing Law, or any other Ohio law regarding motor vehicle registration or regulating their operation on the highway, but classifies it as a class six suspension (R.C. 4507.16(A)). The bill generally retains the provision that prohibits any judge from suspending a specified portion (30 days under existing law) of a license, permit, or privilege suspension imposed for the violations described above, but it relocates the provision to the same section to which it relocates the suspension in question, and it makes the length of the restriction on

judges the same length as the minimum suspension that must be imposed instead of a flat 30-day restriction (R.C. 2921.331(E), 4507.16(A), 4511.251(C), 4549.02, 4549.021, and 5749.99). The Appendix compares the length of a suspension under existing law and as reclassified and relocated by the bill.

The bill revises numerous existing provisions that refer to "R.C. 4507.16 suspensions" to conform the provisions to these relocations (R.C. 119.062, 1905.201, 4507.08(D)(6), 4507.164, 4509.33, 4509.35, 4510.038 (relocated from 4507.022), and 4511.191(H)(2)(b)). In addition to the reclassification and relocation discussed in the Appendix, the bill eliminates the existing judicial license suspension for any crime punishable as a felony under the Ohio motor vehicle laws or any other felony in the commission of which a motor vehicle is used (this elimination does not apply to the vehicular homicide-related or vehicular assault-related offenses, which provide their own specific suspensions) (repeal of R.C. 4507.16(A)(1)(b));

The bill also eliminates the requirement for a trial judge of any court of record to impose a suspended jail sentence not to exceed six months, if imprisonment was not imposed for the offense for which the person was convicted (repeal of R.C. 4507.16(A)(3), last paragraph);

In regard to the requirement of existing law for the clerk of court to forward to the Registrar a copy or transcript of the conviction or order forfeiture of bail whenever any nonresident has been convicted of the offenses for which existing law requires a suspension or has forfeited bail to secure the person's appearance for trial, the bill replaces a specific reference to the listed offenses requiring suspension under R.C. 4507.16 with a general reference to any offense for which the court is required to impose a license suspension under the Revised Code (R.C. 4509.35).

Succeeding portions of this analysis contain a detailed discussion of the changes made by the bill to the OMVI law (renamed OVI), the OMVUAC Law (renamed OVUAC), and the vehicular homicide-related laws and for the changes made to license suspensions that can be imposed for those offenses (see "***State OMVI--state OVI***," "***State OMVUAC--state OVUAC***," "***Vehicular homicide, vehicular assault, and involuntary manslaughter offenses***," and "***Suspension for a violation of a substantially similar municipal ordinance***," below). See the Appendix for a comparison of the length of an OVI, OVUAC, or vehicular homicide-related suspension of a person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege under existing law and the bill.

Procedures related to license suspensions and revocations under R.C. 4507.16

License delivery

Under existing law, after a driver's or commercial driver's license or permit has been suspended or revoked under existing R.C. 4507.16, the judge of the court or mayor of the mayor's court that suspended or revoked the license or permit must cause the offender to deliver the license or permit to the court. The judge, mayor, or clerk must forward the license or permit to the Registrar with notice of the action of the court. (R.C. 4507.16(H)(1).) The bill relocates this provision, generally retains its substance, removes the reference to license revocation, and replaces the reference to the eliminated "R.C. 4507.16 suspensions" with references to the specific substantive Revised Code provisions to which the suspensions were relocated (R.C. 4510.13(C)(1), and repeal of R.C. 4507.16(H)(1)).

Commercial driver's license

Under existing law, suspension of a commercial driver's license under existing R.C. 4507.16 must be concurrent with any period of disqualification for failure to pay child support or under the Commercial Drivers' Licensing Law. No person who is disqualified for life from holding a commercial driver's license under the Commercial Drivers' Licensing Law may be issued a driver's license during the period for which the commercial driver's license was otherwise suspended, and no person whose commercial driver's license is suspended may be issued a driver's license during the period of the suspension. (R.C. 4507.16(H)(2).) The bill relocates and retains this provision, with conforming changes (R.C. 4510.13(C)(2), and repeal of R.C. 4507.16(H)(2)).

Credit for certain administrative or judicial suspensions

Existing law requires the judge of the court or mayor of the mayor's court to credit any time during which an offender was subject to an administrative suspension of the offender's license, permit, or privilege imposed under the Vehicle Implied Consent Law for refusal to take a designated chemical test or failure of the test, or a suspension imposed by a judge, referee, or mayor under R.C. 4511.196 because the person's continued driving will be a threat to public safety, against the time to be served under a related suspension imposed under R.C. 4507.16. (R.C. 4507.16(J).) The bill relocates this requirement, with conforming changes (R.C. 4510.13(D) and repeal of R.C. 4507.16(J)).

Notice

Under existing law, the judge or mayor must notify the BMV of any determinations made, and of any suspensions or revocations imposed for state or municipal OMVI (R.C. 4507.16(K)). The bill relocates this requirement and requires the judge or mayor to notify the BMV of any determinations made with respect to suspensions referred to above under "***License delivery***" (R.C. 4510.13(E) and repeal of R.C. 4507.16(K)).

Ignition interlock orders

Under existing law, if a court issues an ignition interlock order when granting occupational driving privileges, the order must authorize the offender during the specified period to operate a motor vehicle only if it is equipped with a certified ignition interlock device. The court must provide the offender with a copy of an ignition interlock order and the copy of the order must be used by the offender in lieu of an Ohio driver's or commercial driver's license or permit until the Registrar or a deputy registrar issues the offender a restricted license. Existing law specifies that an ignition interlock order accompanying occupational driving privileges does not authorize or permit the offender to whom it has been issued to operate a vehicle during any time that the offender's driver's or commercial driver's license or permit is suspended or revoked under any other provision of law. (R.C. 4507.16(L)(1).)

Under existing law, the offender may present the ignition interlock order to the Registrar or to a deputy registrar. Upon presentation of the order, the Registrar or deputy registrar must issue the offender a restricted license. A restricted license is identical to an Ohio driver's license, except that it has printed on its face a statement that the offender is prohibited during the period specified in the court order from operating any motor vehicle that is not equipped with a certified ignition interlock device, and except that the date of commencement and the date of termination of the period must be indicated conspicuously upon the face of the license. (R.C. 4507.16(L)(2).)

The bill relocates and retains these provisions, except it replaces "ignition interlock device" with "immobilizing or disabling device" (R.C. 4510.13(F) and repeal of R.C. 4507.16(L)) (see "***Immobilizing or disabling device***," below). The bill also relocates and retains the definition of "ignition interlock device" (i.e., a device that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start that motor vehicle by using its ignition system, and that deters starting the motor vehicle by use of its ignition system unless the person attempting to so start the vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight

of alcohol in the person's breath is below a preset level), defines "immobilizing or disabling device," and specifies that "immobilizing or disabling device" includes an ignition interlock device. The bill adds that the ignition interlock device must be approved by the Director of Public Safety. (R.C. 4510.01(C).)

Reissuance after OVI suspension

Under existing law, the Registrar may destroy a driver's or commercial driver's license or permit that he or she receives because it has been revoked or suspended under the Vehicle Implied Consent Law. Upon destroying the license or permit, the Registrar must reissue or authorize the reissuance of a license to the person, free of payment of any type of fee or charge, if the license would have been valid had it not been destroyed, and if either of the following applies (R.C. 4507.55):

(1) The person appeals the suspension of the license or permit at his initial appearance, the judge of the court of record or the mayor of the mayor's court who conducts the initial appearance terminates the suspension, and the judge or mayor does not suspend the license or permit because the person's continued driving will be a threat to public safety.

(2) The person appeals the suspension of the license or permit at his initial appearance, and the suspension is upheld at the trial level, but terminated upon appeal.

The bill relocates this section as R.C. 4510.53. The bill also expands the provision to allow the Registrar to destroy the license of a person whose license was suspended for a state OVI or OVUAC violation, as well as under the Vehicle Implied Consent Law. It also allows the appeal of the suspension to take place at or within 30 days of the person's initial appearance. The bill removes a reference to a "revoked" license. (R.C. 4510.53.)

Suspension for violation of occupational driving privileges or of probation

Under existing law, the trial judge of any court of record or the mayor of a mayor's court, in addition to or independent of all other penalties provided by law or by ordinance, may suspend the license, permit, or privilege of any person who violates a requirement or prohibition of the court imposed by the court concerning occupational driving privileges granted during a suspension imposed for a state or municipal OMVI conviction or during a prior suspension imposed under this provision or violates an ignition interlock requirement imposed as a condition of probation granted for a state or municipal OMVI or OMVUAC violation or a related violation, as follows (R.C. 4507.16(C)):

(1) For not more than one year, upon conviction for a first violation of the requirement or prohibition;

(2) For not more than five years, upon conviction for a second or subsequent violation of the requirement or prohibition during the same period of required use of an ignition interlock device.

The bill relocates the ignition interlock violation-related suspension to R.C. 2951.02(G)(4) and classifies it as a Class 7 (not to exceed one year) suspension on first violation and a Class 4 (one to five years) suspension on a repeat violation. It eliminates the remainder of the provision, including the suspension for a violation of "occupational driving privileges," but it enacts a related provision in R.C. 4510.11, as described in "***Driving under suspension other than under the Financial Responsibility Law, or in violation of a license restriction***" (repeal of R.C. 4507.16(C); R.C. 4510.11).

Operation without a valid license and related provisions

Existing law

Under existing law, no person, unless expressly exempted under law unaffected by the bill, may do either of the following:

(1) Operate any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state unless the person has a valid driver's license or a commercial driver's license (R.C. 4507.02(A)(1));

(2) Operate any motorcycle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state unless the person has a valid license as a motorcycle operator that was issued by the Registrar. The license as a motorcycle operator must be in the form of an endorsement upon a driver's or commercial driver's license if the person has a valid license to operate a motor vehicle or commercial motor vehicle or in the form of a restricted license if the person does not have a valid license to operate a motor vehicle or commercial motor vehicle. (R.C. 4507.02(A)(3).)

Under existing law, whoever violates either of the above requirements to have a valid license by operating a motor vehicle when the person's driver's or commercial driver's license has been expired for no more than six months is guilty of a minor misdemeanor. Apparently, a person who violates either of those requirements in any other circumstances is guilty of a misdemeanor of the first degree. (R.C. 4507.99(D) and (H).)

Operation of the bill

The bill retains but relocates the two provisions described above that require possession of a valid driver's license to operate a motor vehicle in Ohio or a motorcycle endorsement to operate a motorcycle in Ohio (R.C. 4510.12(A)(1) and (2), and repeal of existing R.C. 4507.02(A)(1) and (3)). The bill specifically designates a violation of either prohibition as the offense of "operating a motor vehicle without a valid license" and modifies and relocates the penalties for the violations. The bill imposes a graduated penalty, depending on the length of time the license has been expired and whether the person has previous violations for operating a motor vehicle without a valid license. Under the bill, whoever is guilty of operating a motor vehicle without a valid license is punished as follows (R.C. 4510.12(B)):

(1) If the offender's driver's or commercial driver's license or permit was expired at the time of the offense for no more than six months, subject to (3) to (5), below, the offense is a minor misdemeanor.

(2) If the license or permit was expired at the time of the offense for more than six months, subject to (3) to (5), below, the offense is a misdemeanor of the fourth degree.

(3) If the offender previously was convicted of or pleaded guilty to one offense of operating a motor vehicle without a valid license or one violation of a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the third degree.

(4) If the offender previously was convicted of or pleaded guilty to two offenses of operating a motor vehicle without a valid license or violations of a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the second degree.

(5) If the offender previously was convicted of or pleaded guilty to three or more offenses of operating a motor vehicle without a valid license or violations of a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the first degree.

If the offender was convicted of or pleaded guilty to one or more offenses of operating a motor vehicle without a valid license or violations of a substantially equivalent municipal ordinance within the past three years, and if the offender's license was expired for more than six months at the time of the offense, the bill requires the court to impose a Class 7 (a definite period not to exceed one year) suspension of the offender's license, permit, or privilege. The court may not impose a license suspension for a first violation of operating a motor vehicle

without a valid license or if more than three years have passed since the offender's last violation of operating a motor vehicle without a valid license. (R.C. 4510.12(C) and (D) and 4510.02(A)(7).)

Driving under a suspension imposed for an OMVI conviction or under the Vehicle Implied Consent Law; violating conditions of occupational driving privileges

Existing law

Offense of driving under OMVI suspension. Existing law prohibits a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended by a court for a state or municipal OMVI violation from operating any vehicle upon Ohio's streets or highways during the period of the suspension and prohibits a person who is granted occupational driving privileges by a court from operating any vehicle upon Ohio's streets or highways other than in accordance with the terms of those privileges. (R.C. 4507.02(D)(2).) A violation of this prohibition is the offense of "driving under OMVI suspension or revocation" and is punished as follows (R.C. 4507.99(B)):

(1) ***Generally***. Except as otherwise provided below in (2) or (3), it is a misdemeanor of the first degree with a mandatory term of imprisonment of not less than three consecutive days. Subject to availability of space at the incarceration center, the court alternatively may sentence the offender to a term of not less than 30 consecutive days of electronically monitored house arrest. The period of electronically monitored house arrest cannot exceed six months. In addition, the court must impose upon the offender a fine of not less than $250 and not more than $1,000.

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, but subject to the protection afforded to an innocent owner, as discussed in "***Vehicle impoundment, immobilization, and forfeiture procedures***," below, the court must order the immobilization for 30 days of the vehicle the offender was operating at the time of the offense and the impoundment for 30 days of its license plates.

(2) ***Second offense in five years***. If, within five years of the offense, the offender once has been convicted of or pleaded guilty to driving under OMVI suspension or revocation or a violation of a municipal ordinance that is substantially equivalent to that offense, it is a misdemeanor. The court must sentence the offender to a term of imprisonment of not less than ten consecutive days and may sentence the offender to a longer definite term of imprisonment of not more than one year. Subject to the availability of space at the incarceration

facility, the court alternatively may sentence the offender to a term of electronically monitored house arrest of not less than 90 consecutive days and not more than one year. In addition, the court must impose upon the offender a fine of not less than $500 and not more than $2,500.

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, but subject to the protection afforded to an innocent owner, the court also must order the immobilization for 60 days of the vehicle the offender was operating at the time of the offense and the impoundment for 60 days of its license plates.

(3) ***Third or subsequent offense in five years***. If, within five years of the offense, the offender two or more times has been convicted of or pleaded guilty to driving under OMVI suspension or revocation or a violation of a municipal ordinance that is substantially equivalent to that offense, it is a misdemeanor. The court must sentence the offender to a term of imprisonment of not less than 30 consecutive days and may sentence the offender to a longer definite term of imprisonment of not more than one year. The court cannot sentence the offender to a term of electronically monitored house arrest. In addition, the court must impose upon the offender a fine of not less than $500 and not more than $2,500.

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, but subject to the protection afforded to an innocent owner, the court must order the criminal forfeiture to the state of the vehicle the offender was operating at the time of the offense.

If title to a motor vehicle that is subject to the order for criminal forfeiture is assigned or transferred and there are lienholder or other interests that prevent the criminal forfeiture of the vehicle, the court also may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association.

(4) ***License suspension***. In addition to or independent of all other penalties provided by law or ordinance, the sentencing judge or mayor of the mayor's court must suspend for a period not to exceed one year the offender's driver's or commercial driver's license or permit or nonresident operating privilege.

(5) ***Fine disposition***. Fifty per cent of the fine imposed under these provisions is deposited into the county or municipal indigent drivers alcohol treatment fund under the control of that court.

(6) ***Commercial driver's license suspension***. Suspension of a commercial driver's license for driving under OMVI suspension or revocation is concurrent

with any period of disqualification otherwise imposed. No person who is disqualified for life from holding a commercial driver's license under the Commercial Driver's Licensing Law may be issued a driver's license during the period for which the commercial driver's license was so suspended, and no person whose commercial driver's license is so suspended may be issued a driver's license during the period of the suspension.

Offense of driving under a Vehicle Implied Consent Law Suspension. Existing law prohibits a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under the state's Vehicle Implied Consent Law or under R.C. 4511.196 (see "***R.C. 4511.196 suspension***," below) from operating a vehicle upon Ohio's streets or highways. It is an affirmative defense to a prosecution brought for a violation of this prohibition that the alleged offender drove under suspension because of a substantial emergency, provided that no other person was reasonably available to drive in response to the emergency. (R.C. 4511.192.)

A violation of the prohibition described in the preceding paragraph is a misdemeanor of the first degree. The court, in addition to or independent of all other penalties provided by law, may suspend for a period not to exceed one year the driver's or commercial driver's license or permit or nonresident operating privilege of the offender. (R.C. 4511.99(B).)

Operation of the bill

Generally. The bill relocates the offense of driving under OMVI suspension or revocation, includes within the offense the current prohibition against operating a vehicle while under a Vehicle Implied Consent Law or an R.C. 4511.196 suspension, renames the offense, expands and modifies some of its elements, extends to six years the "look back" period used in determining the sentence for the offense, and enacts a new sentencing structure for it. The bill maintains identical periods of imprisonment, fines, and periods of vehicle immobilization or impoundment and criminal forfeiture. (R.C. 4510.14, and repeal of existing R.C. 4507.02(D)(2), 4507.99(B), 4511.192(A) and (B), and 4511.99(B).)

Offense. The bill prohibits a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended subsequent to a conviction of state OVI or state OVUAC, under the state's Vehicle Implied Consent Law (all as described in succeeding portions of this analysis), under R.C. 4511.196 (see "***R.C. 4511.196 suspension***," below), or for a violation of a municipal OVI ordinance (see "***Suspension for a violation of a substantially similar municipal ordinance***," below) from operating any motor vehicle upon Ohio's highways or streets during the period of the suspension (R.C. 4510.14(A)).

The bill does not include within this prohibition the current prohibition against a person operating a vehicle contrary to the terms of occupational driving privileges granted to the person, but it enacts a related prohibition in R.C. 4510.11, as described below in "***Driving under suspension other than under the Financial Responsibility Law, or in violation of a license restriction***" (R.C. 4510.11).

Penalties. A violation of the prohibition is the offense of "driving under OVI suspension," and the court is required to sentence the offender under the Criminal Sentencing Law (R.C. Chapter 2929.), subject to the authorized or required differences described below(R.C. 4510.14(B)):

(1) ***Generally***. Except as otherwise described in (2) or (3), below, driving under OVI suspension is a misdemeanor of the first degree, and the court must sentence the offender to all of the following: (a) a mandatory jail term of three consecutive days (unless the court instead imposes an alternative electronically monitored house arrest sentence of not less than 30 consecutive days, and not more than six months), (b) a fine of not less than $250 and not more than $1,000, (c) a license suspension as described below, and (d) if the vehicle the offender was operating at the time of the offense is registered in the offender's name, immobilization for 30 days of the offender's vehicle and impoundment for 30 days of its license plates, under the provisions described below in "***Vehicle impoundment, immobilization, and forfeiture procedures***." If the court imposes a mandatory three-day jail term under this provision, it may impose a jail term in addition to that term, provided that in no case may the cumulative jail term imposed for the offense exceed six months.

(2) ***Second offense in six years***. If, within *six years* of the offense (expanded from five years), the offender one time previously has been convicted of or pleaded guilty to driving under OVI suspension or an "equivalent offense" (see "***Definitions***," below), driving under OVI suspension is a misdemeanor of the first degree, and the court must sentence the offender to all of the following:

(a) A mandatory jail term of ten consecutive days. Notwithstanding the terms of imprisonment provided in the Criminal Sentencing Law, the court may sentence the offender to a jail term of not more than one year. The ten-day mandatory jail term must be imposed unless the court imposes an alternative electronically monitored house arrest sentence of not less than 90 consecutive days and not more than one year.

(b) Notwithstanding the fines provided in the Criminal Sentencing Law, a fine of not less than $500 and not more than $2,500;

(c) A license suspension as described below;

(d) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, immobilization of the offender's vehicle for 60 days and the impoundment for 60 days of its license plates.

(3) ***Third or subsequent offense in six years***. If, within six years of the offense, the offender two or more times previously has been convicted of or pleaded guilty to driving under OVI suspension or an "equivalent offense" (see "***Definitions***," below), driving under OVI suspension is a misdemeanor, and the court must sentence the offender to all of the following:

(a) A mandatory jail term of 30 consecutive days. Notwithstanding the terms of imprisonment provided in the Criminal Sentencing Law, the court may sentence the offender to a longer jail term of not more than one year. The court cannot sentence the offender to a term of electronically monitored house arrest in lieu of the mandatory portion of the jail term.

(b) Notwithstanding the fines set forth in the Criminal Sentencing Law, a fine of not less than $500 and not more than $2,500;

(c) A license suspension as described below;

(d) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, criminal forfeiture to the state of the offender's vehicle. If title to a motor vehicle that is subject to the order for criminal forfeiture is assigned or transferred and there are lienholder or other interests that prevent the criminal forfeiture of the vehicle, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association.

Electronically monitored house arrest restrictions. As under existing law, the bill prohibits a court from imposing an alternative sentence of electronically monitored house arrest unless, within 60 days of the date of sentencing, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender will serve the jail term imposed, the offender will not be able to begin serving that term within the 60-day period following the date of sentencing. An offender sentenced to a period of electronically monitored house arrest must be permitted work release during that period. (R.C. 4510.14(C).)

Fine distribution. Fifty per cent of any fine imposed by a court on a person convicted of driving under an OVI conviction must be deposited into the county or municipal indigent drivers alcohol treatment fund under the control of that court, created under the Vehicle Implied Consent Law (R.C. 4510.14(D)).

License suspension. The bill specifies that, in addition to or independent of all other penalties provided by law or ordinance, the sentencing judge or mayor must impose a Class 7 suspension (a definite period not to exceed one year) of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. If the court grants limited driving privileges under the bill during a suspension imposed for driving under OVI suspension, the privileges must be granted on the additional condition that the offender must display restricted license plates on the vehicle driven subject to the privileges subject to exceptions for certain employer-owned or out-of-state vehicles.

A suspension of a commercial driver's license under this provision is concurrent with any period of disqualification under a child support order or under the Commercial Driver's Licensing Law. No person who is disqualified for life from holding a commercial driver's license under the Commercial Driver's Licensing Law may be issued a driver's license during the period for which the commercial driver's license was suspended, and no person whose commercial driver's license is suspended for driving under OVI suspension may be issued a driver's license during the period of the suspension. (R.C. 4510.14(E).)

Definitions. The bill incorporates by reference the Criminal Sentencing Law's definitions of "electronically monitored house arrest" and "jail." It also defines the following terms for purposes of the offense of driving under OVI suspension (R.C. 4510.14(F)):

(1) "Equivalent offense" means any violation of a municipal ordinance, law of another state, or law of the United States that is substantially equivalent to the offense of driving under OVI suspension, or a violation of a former Ohio law that was substantially equivalent to the offense of driving under OVI suspension.

(2) "Mandatory jail term" means the mandatory term in jail of three, ten, or 30 consecutive days that must be imposed under the bill upon an offender convicted of the offense of driving under OVI suspension and in relation to which all of the following apply: (a) except as specifically authorized under the bill, the term must be served in a jail, and (b) except as specifically authorized under the bill, the term cannot be suspended, reduced, or otherwise modified pursuant to any provision of the Revised Code.

Pretrial seizure and retention of vehicle involved in DUS or wrongful entrustment offense

Existing law

Under existing law, if a person is arrested for driving under OMVI suspension or revocation (R.C. 4507.02(D)(2)), for driving under financial

responsibility law suspension or revocation (R.C. 4507.02(B)(1)), for permitting the operation of a vehicle by a person with no legal right to operate a vehicle (R.C. 4507.33), or for violating a substantially equivalent municipal ordinance, the arresting officer or another officer of the agency that employs the arresting officer must seize the vehicle that the person was operating at the time of the offense and its license plates. The law provides detailed procedures that govern the disposition of the vehicle after its seizure, including its possible return in specified circumstances to the vehicle owner.

A vehicle seized under this provision must be safely kept at the place to which it is towed or otherwise moved by the law enforcement agency until the arrested person's initial appearance relative to the charge in question. If, at the initial appearance, the arrested person pleads guilty or no contest to the violation charged: (1) the court must impose sentence upon the arrested person as provided by law or ordinance, (2) the court, except as described below and subject to the "innocent owner" exception (see "***Vehicle impoundment, immobilization, and forfeiture procedures***, below), must order the immobilization of the vehicle and the impoundment of its license plates or the criminal forfeiture of the vehicle, whichever is applicable, and (3) the vehicle and its license plates cannot be returned or released to the vehicle owner. If the arrested person is not the vehicle owner and the owner is not present at the appearance and if the court believes that the owner was not provided adequate notice of the initial appearance, the court may refrain for a period of time not exceeding seven days from ordering the immobilization of the vehicle and the impoundment of its license plates, or the criminal forfeiture of the vehicle so that the owner may appear before the court to present evidence as to why the court should not order the immobilization and impoundment or forfeiture.

If, at any time, the charge that the arrested person committed the violation charged is dismissed for any reason, the court must order that the vehicle seized at the time of the arrest and its license plates immediately be released to the vehicle owner subject to the payment of expenses or charges incurred in the removal and storage of the vehicle.

If a vehicle seized under the provision is not returned or released to the vehicle owner as described above, the vehicle or its license plates must be retained until the final disposition of the charge in question. Upon the final disposition of that charge, the court must do whichever of the following is applicable: (1) if the arrested person is convicted of the violation charged, the court must impose sentence upon the person as provided by law or ordinance and, subject to the innocent owner exception, must order the immobilization and impoundment of the vehicle or the criminal forfeiture of the vehicle (as described in "***Vehicle impoundment, immobilization, and forfeiture procedures***," below), whichever is

applicable, (2) if the arrested person is found not guilty of the violation, the court must order that the vehicle and its license plates immediately be released to the vehicle owner upon the payment of any expenses or charges incurred in its removal and storage, or (3) if the charge of the violation is dismissed for any reason, the court must order that the vehicle and its license plates immediately be released to the vehicle owner upon the payment of any expenses or charges incurred in its removal and storage.

The vehicle owner may be charged expenses or charges incurred in the removal and storage of the immobilized vehicle. The court with jurisdiction over the case, after notice to all interested parties, including lienholders, and after an opportunity for them to be heard, if the vehicle owner fails to appear in person, without good cause, or if the court finds that the vehicle owner does not intend to seek release of the vehicle at the end of the period of immobilization or that the vehicle owner is not or will not be able to pay the expenses and charges incurred in its removal and storage, may order that title to the vehicle be transferred, in order of priority, first into the name of the person or entity that removed it, next into the name of a lienholder, or lastly into the name of the owner of the place of storage. Special provisions apply regarding any lienholder that receives title under such a court order. (R.C. 4507.38.)

Operation of the bill

The bill relocates these pretrial vehicle seizure and retention provisions and modifies them to conform them to the changes it makes in the driving under suspension and wrongful entrustment penalty provisions regarding vehicle immobilization, impoundment, and forfeiture (see "***Driving under a suspension imposed for an OMVI conviction. . .***," above; see "***Offense of wrongful entrustment***," below, for a discussion of the wrongful entrustment provisions). Under the bill, the driving under suspension and wrongful entrustment immobilization, impoundment, and forfeiture provisions apply regarding a vehicle used in committing one of those offenses *only if the vehicle was registered in the arrested person's name*. The bill changes the terminology, and many of the procedures, of the pretrial seizure and retention provisions to reflect this change. It also eliminates references to the "innocent owner" exception the bill repeals (as described below in "***Vehicle impoundment, immobilization, and forfeiture procedures***"), adds a new "fourth option" that applies to the court upon the final disposition of the charge that was the basis for the seizure of the vehicle, and clarifies that the arrested person (except as described below) generally may be charged expenses or charges incurred for the removal and storage of the vehicle. Under the bill's fourth option, instead of using any of the three existing options as described in the second preceding paragraph, if the impoundment of the vehicle in question was not authorized under the pretrial seizure and retention provision as

amended by the bill, the court must order that the vehicle and its license plates be returned immediately to the arrested person or, if the arrested person is not the vehicle owner, to the vehicle owner, and order that the state or a political subdivision of the law enforcement agency served by the law enforcement officer who seized the vehicle pay all expenses and charges incurred in its removal and storage. (R.C. 4510.41.)

Financial responsibility suspension

Existing law

Existing law unaffected by the bill prohibits any person from operating, or permitting the operation of, a motor vehicle in Ohio unless proof of financial responsibility is maintained continuously throughout the registration period with respect to that vehicle or, in the case of a driver who is not the owner, with respect to that driver's operation of that vehicle (R.C. 4509.101(A)(1)). Under existing law, a person who violates the financial responsibility requirement is subject to the following civil penalties (R.C. 4509.101(A)):

(1) Suspension of the person's operating privileges and impoundment of the person's license until the person pays a financial responsibility reinstatement fee of $75 on a first violation, $250 for a second violation, and $500 for subsequent violations; pays a nonvoluntary compliance fee if necessary; and files and continuously maintains proof of financial responsibility. The suspension is for a period of not less than 90 days except that if, within five years of the violation, the person's operating privileges are again suspended and the person's license is impounded one or more times for a financial responsibility violation, the suspension is for a period of not less than one year. Except as discussed below, the suspension is not subject to revocation, suspension, or occupational or other limited operating privileges.

(2) In addition to the suspension of operating privileges, the offender is subject to the suspension of the rights of the owner to register the motor vehicle and the impoundment of the owner's certificate of registration and license plates until the owner pays the applicable reinstatement fee and the nonvoluntary compliance fee, if necessary, and files and continuously maintains proof of financial responsibility.

Any person whose operating privileges have been suspended for a financial responsibility violation may petition the Registrar for occupational driving privileges if the suspension seriously affects the person's ability to continue employment. The person seeking occupational driving privileges must file proof of financial responsibility with the petition. When the Registrar receives a petition for occupational driving privileges, existing law requires the Registrar to grant the

petitioner the occupational driving privileges if the Registrar determines all of the following (R.C. 4509.105):

(1) The petitioner has filed current proof of financial responsibility with the Registrar.

(2) The petitioner has not previously had operating privileges suspended for a financial responsibility violation.

(3) The petitioner has not had a license or commercial driver's license suspended within the previous five years for accumulating 12 points against the petitioner's license.

(4) The petitioner has not been convicted of any criminal or traffic violation within the previous five years for which six points are assessed.

(5) The petitioner's license is not subject to suspension for any other reason.

(6) The petitioner has paid or secured all damages caused while driving without proof of financial responsibility.

(7) The petitioner has paid all applicable financial responsibility reinstatement fees or financial responsibility nonvoluntary compliance fees.

Existing law prohibits granting occupational driving privileges during the first 30 days of the petitioner's license suspension. A person granted occupational driving privileges for a financial responsibility suspension must continuously maintain proof of financial responsibility with the Registrar for a period of five years from the date of suspension of operating privileges by the Registrar. (R.C. 4509.105.)

Existing law specifies the type of proof of financial responsibility that must be filed when required. The required proof must be filed and maintained for five years from the date of suspension of operating privileges. (R.C. 4509.45.)

Operation of the bill

Under the bill, subject to the "repeat offense suspension" provisions described below, a person who violates the prohibition related to the financial responsibility requirement is subject to a Class E (three months) administrative suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege and impoundment of the person's license. The court may grant limited driving privileges to the person only if the person presents proof of financial responsibility

and also pays a financial responsibility reinstatement fee of $75 on a first violation, $250 for a second violation, and $500 for subsequent violations; pays a nonvoluntary compliance fee if necessary; and files and continuously maintains proof of financial responsibility (as under existing law, the person also must satisfy these criteria to be restored operating privileges and registration rights and to be returned impounded materials). (R.C. 4509.101(A)(2)(a) and (5).)

If, within five years of the violation, the person's operating privileges are again suspended and the person's license again is impounded for a violation of the financial responsibility related prohibition, the person is subject to a Class C (one year) administrative suspension. The granting of limited driving privileges to the person is subject to the same requirements concerning the payment of fees and maintaining of proof of financial responsibility as is required on a first offense. No court may grant limited driving privileges for the first 15 days of the suspension. (R.C. 4509.101(A)(2)(b).)

If, within five years of the violation, the person's operating privileges are suspended and the person's license is impounded two or more times for a violation of the financial responsibility related prohibition, the person is subject to a Class B (two years) administrative suspension. No court may grant limited driving privileges to the person. (R.C. 4509.101(A)(2)(c).)

The bill repeals the section of existing law establishing the procedures and conditions under which a person may petition the Register for, and the Registrar may grant, occupational driving privileges to a person whose license is under a financial responsibility suspension (R.C. 4509.105, repealed).

The bill also repeals the provision of existing law requiring the Registrar to 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, whenever the Registrar 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 for which a license suspension is required. However, the requirement to suspend a license under this repealed provision of law does not apply if the person has given or immediately gives and thereafter maintains, for a period of three years, proof of financial responsibility with respect to all the motor vehicles registered by the person as the owner. The repealed requirement to suspend a license also does not apply to OMVI offenses if the offender does not have previous OMVI offenses and the offender did not cause serious physical harm to any other person. (R.C. 4509.31, repealed.)

Additionally, the bill repeals a provision of existing law prohibiting a motor vehicle from continuing to be registered or being registered in the name of a

person as owner unless the person gives and thereafter maintains proof of financial responsibility if the person has no license but by final order or judgment of a court of record or mayor's court is convicted of, or forfeits any bail or collateral deposited to secure an appearance for trial for, any offense authorizing the revocation of license, or for driving a motor vehicle upon the highways without being licensed to do so, or for driving an unregistered motor vehicle upon the highways. Under this repealed provision, if the offense was an offense authorizing the revocation of license, no license may be thereafter issued to such person for a period of two years following the conviction or bail forfeiture and not until the person gives and thereafter maintains proof of financial responsibility. (R.C. 4509.32, repealed.)

The bill retains the existing types of proof of financial responsibility that must be filed when a person is required to file and maintain proof of financial responsibility. However, the bill requires that the proof be filed and maintained for five years from the date of the Registrar's imposition of a Class A, B, or C suspension (a definite period of three years, two years, or one year) and for three years from the date of the Registrar's imposition of a Class D, E, or F suspension (a definite period of six months, three months, or until conditions are met). (R.C. 4509.45.)

Driving under financial responsibility suspension

Existing law

Existing law prohibits any person whose driver's or commercial driver's license or permit or nonresident's operating privilege has been suspended or revoked under the Financial Responsibility Law from operating any motor vehicle within Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period of the suspension or revocation, except as specifically authorized by that Law. It also prohibits any person from operating a motor vehicle within Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period in which the person is required to file and maintain proof of financial responsibility for a financial responsibility violation, unless proof of financial responsibility is maintained with respect to that vehicle. (R.C. 4507.02(B)(1).)

A person who violates either of the above prohibitions is guilty of "driving under financial responsibility law suspension or revocation." Driving under financial responsibility law suspension or revocation is a first degree misdemeanor. 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, subject to the innocent owner protections, also must do one of

the following regarding the vehicle the offender was operating at the time of the offense (R.C. 4507.99(C)(1), (2), and (3)):

(1) Subject to (2) and (3), immobilize the vehicle and impound its license plates for 30 days;

(2) Immobilize the vehicle and impound its license plates for 60 days if, within five years of the offense, the offender has been convicted of or pleaded guilty to one driving under financial responsibility law suspension or revocation violation or one violation of a substantially equivalent municipal ordinance;

(3) Order the criminal forfeiture to the state of the vehicle if, within five years of the offense, the offender has been convicted of or pleaded guilty to two or more violations of driving under financial responsibility law suspension or revocation or of a substantially equivalent municipal ordinance. If title to a motor vehicle that is subject to an order for criminal forfeiture under this provision is assigned or transferred and there are lienholder or other interests that prevent the criminal forfeiture of the vehicle, the court also may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association.

Additionally, in all cases, the court may suspend the driver's or commercial driver's license or permit or nonresident operating privilege of an offender who is sentenced for driving under financial responsibility suspension or revocation for a period not to exceed one year. The court may not release a vehicle from the immobilization unless the court is presented with current proof of financial responsibility with respect to that vehicle. (R.C. 4507.99(C)(4) and (5).)

Operation of the bill

The bill relocates the existing prohibition and penalties, in a manner similar to existing law. The offense consists of the same prohibitions, has the same name, and continues to be a first degree misdemeanor. The bill maintains identical periods of immobilization and impoundment, the possibility of criminal forfeiture, and the possibility of a fine to be imposed upon an offender who transfers a vehicle that is subject to a criminal forfeiture order, in the same circumstances as under existing law. The period of suspension to be imposed becomes a *mandatory* Class 7 (a definite period not to exceed one year) judicial suspension. The bill eliminates the possibility that a vehicle belonging to a person other than the offender may be subject to immobilization, impoundment, or criminal forfeiture. It broadens the coverage of what may be considered a previous offense by removing the five-year "look-back" period, so that any prior conviction, regardless of when it occurred, is considered in determining the proper penalty. Last, it

eliminates references to the license being under "revocation." (R.C. 4510.16 and repeal of 4507.02(B)(1) and 4507.99(C).)

Drug offenses under federal law or in another state or OMVI or OMVUAC in another state

Suspensions

Existing law. Existing law requires the Registrar to suspend or deny issuance of a driver's or commercial driver's license or permit to any adult or juvenile who is a resident of Ohio and is convicted of or pleads guilty to a violation of (1) drug offense laws of any other state or federal drug offense laws that are substantially similar to specified Ohio drug offenses, or (2) OMVI or OMVUAC laws or municipal ordinances of another state that are substantially similar to Ohio's state OMVI or OMVUAC laws. When the Registrar is notified of such a conviction or plea, the Registrar must notify the person that the suspension or denial of the person's license or permit will take effect 21 days from the date of the notice. Existing law establishes a procedure for filing a notice requesting a hearing and conducting the hearing limited to whether the person actually was convicted of or pleaded guilty to the offense for which the suspension or denial is to be imposed.

The period of suspension or denial ends either on the last day of any period of suspension of the person's nonresident operating privilege imposed by the state or federal court located in the other state, or the date six months and 21 days from the date of the notice sent by the Registrar to the person, whichever is earlier. (R.C. 4507.169(A) through (D).)

Operation of the bill. The bill relocates these existing provisions. It retains the required suspensions and the notification and hearing requirements. Under the bill, however, the Registrar must impose a Class D (six months) administrative suspension, and the suspension must end either on the last day of the Class D suspension period or of the suspension of the person's nonresident operating privilege imposed by the state or federal court, whichever is earlier. The bill eliminates the references to "denials." (R.C. 4510.17(A) through (D) and (E).)

Occupational driving privileges

Existing law. Under existing law, any adult or juvenile whose license or permit has been suspended pursuant to an out-of-state OMVI or OMVUAC may file a petition in the court in whose jurisdiction the person resides agreeing to pay the cost of the proceedings and alleging that the suspension would seriously affect the person's ability to continue the person's employment. Upon satisfactory proof that there is reasonable cause to believe that the suspension would seriously affect

the person's ability to continue the person's employment, the judge may grant the person occupational driving privileges during the period the suspension otherwise would be imposed. The judge may not, however, grant occupational driving privileges for employment as a driver of a commercial motor vehicle to any person who would be disqualified from operating a commercial motor vehicle under the Commercial Drivers' Licensing Law if the violation had occurred in Ohio or during any of the following periods of "hard" suspension (R.C. 4507.169(E)):

(1) The first 15 days of the suspension, if the person has not been convicted within five years of the date of the offense giving rise to the suspension of any specified alcohol-related and vehicle-related violations;

(2) The first 30 days of the suspension if the person has been convicted of a violation of the specified alcohol-related and vehicle-related violation only one time within five years of the date of the offense giving rise to the suspension;

(3) The first 180 days of the suspension if the person has been convicted of a violation of any of the specified alcohol-related and vehicle-related violations two times within five years of the date of the offense giving rise to the suspension.

No occupational driving privileges may be granted if the person has been convicted of a violation of any of the specified alcohol-related and vehicle-related violations three or more times within five years of the date of the offense giving rise to the suspension. (R.C. 4507.169(E).)

Operation of the bill. The bill relocates the provisions of existing law discussed above. It generally retains the provisions for occupational driving privileges as discussed above, including the periods during which no privileges may be granted, with the following changes: (1) it extends to six years the "look-back" period during which the conviction of the specified offenses may act to cause the person to be ineligible for driving privileges, and (2) it replaces the term "occupational" driving privileges with "limited" driving privileges. (R.C. 4510.17(E).)

Failure to reinstate

Existing law

Existing law prohibits any person from operating any motor vehicle within Ohio if the person's driver's or commercial driver's license or permit has been suspended (1) for refusal to take or failure under the Vehicle Implied Consent Law of a designated chemical test of alcohol or drugs, (2) under R.C. 4511.196 at an initial appearance because a person's continued driving will be a threat to public safety, or (3) for a state or municipal OMVI violation. The prohibition against

operating a motor vehicle continues until the person has paid a $425 license reinstatement fee and the license or permit has been returned to the person or a new license or permit has been issued to the person. (R.C. 4507.02(C).) A violation of this prohibition is "driving without paying a license reinstatement fee," a first degree misdemeanor. Additionally, the court may suspend the person's driver's or commercial driver's license or permit or nonresident operating privilege for a period not to exceed one year. (R.C. 4507.99(A).)

Operation of the bill

The bill replaces the existing prohibition with an expanded prohibition that prohibits any person whose driver's or commercial driver's license, temporary instruction permit, or nonresident operating privilege has been suspended from operating any motor vehicle upon a public road or highway or any public or private property after the suspension has expired unless the person has complied with all license reinstatement requirements imposed by a court, the BMV, or another provision of law. This prohibition applies to all license, permit, or privilege suspensions and not to just the selected suspensions reviewed above. A violation of this prohibition is "failure to reinstate a license"; the bill retains it as a first degree misdemeanor. The bill retains the discretionary judicial suspension for a conviction of the offense but provides that the suspension that may be imposed is a Class 7 (definite period not to exceed one year) suspension. (R.C. 4510.21 and repeal of R.C. 4507.02(C) and 4507.99(A).)

Reinstatement fees--court grant of payment plan or extension until future date

The bill enacts a new provision that permits a court, in specified circumstances, to permit a person who owes reinstatement fees to pay the fees under a payment plan or to grant an extension of payment until a future date. The bill provides that, when a municipal court or county court determines in a pending case involving an offender that the offender cannot reasonably pay "reinstatement fees" (see below) due and owing by the offender relative to a suspension that has been or that will be imposed in the case, then the court, by order, may undertake either of the following, in order of preference (R.C. 4510.10(B)):

(1) Establish a reasonable payment plan of not less than $50 per month, to be paid by the offender to the BMV in all succeeding months until all reinstatement fees required of the offender are paid in full;

(2) If the offender, but for the payment of the reinstatement fees, otherwise would be entitled to operate a vehicle in Ohio or to obtain reinstatement of the offender's operating privileges, permit the offender to operate a motor vehicle, as authorized by the court, until a future date upon which date all reinstatement fees must be paid in full. A payment extension so granted cannot exceed 180 days, and

any operating privileges so granted must be solely for the purpose of permitting the offender occupational or "family necessity" privileges in order to enable the offender to reasonably acquire the delinquent reinstatement fees due and owing.

If a municipal court or county court, by order, undertakes either activity described in (1) or (2) above, the court, at any time after the issuance of the order, may determine that a change of circumstances has occurred and may amend the order as justice requires, provided that the amended order also must be an order that is permitted under (1) or (2) above. If a court enters an order of the type described in (1) or (2) above, or in this paragraph, the offender in relation to whom it applies is not subject to prosecution for failing to pay the reinstatement fees covered by the order. (R.C. 4510.10(B) and (C).)

As used in this provision, "reinstatement fees" means the fees that are required under R.C. 4507.1612, 4507.45, 4509.101, 4509.81, 4511.191, 4511.951, or any other Revised Code provision, or under a schedule established by the BMV, in order to reinstate a driver's or commercial driver's license or permit or nonresident operating privilege of an offender under a suspension (R.C. 4510.10(A)).

Repeat traffic offender license suspension (accumulation of points on driving record)

Overview

The bill reorganizes and relocates the existing provisions related to suspending a person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege based on the accumulation of points on the person's driving record. In existing law, the repeat traffic offender suspensions, generally referred to as "point" suspensions, are found in R.C. 4507.021; based on the provisions of existing law, the bill relocates the provisions for suspensions based on point accumulation to R.C. 4510.03 to 4510.037 and repeals R.C. 4507.021.

Record and abstract

Under the bill's relocated provisions, every county court judge, mayor of a mayor's court, and clerk of a court of record must keep a full record of every case in which a person is charged with specified violations of the Motor Vehicle Law (R.C. 4511.01 to 4511.771 and 4513.01 to 4513.36) or of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets. (R.C. 4510.03(A) and repeal of R.C. 4507.021(A).)

If a person is convicted of or forfeits bail in relation to any of the specified violations or a violation of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets, a county court judge, mayor of a mayor's court, or clerk, within ten days after the conviction or bail forfeiture, must prepare and immediately forward to the BMV an abstract, certified by the preparer to be true and correct, of the court record covering the case in which the person was convicted or forfeited bail. Every court of record also must forward to the BMV an abstract of the court record upon the conviction of any person of aggravated vehicular homicide or vehicular homicide or of a felony in the commission of which a vehicle was used. (R.C. 4510.03(B) and repeal of R.C. 4507.021(B) and (D)(1).)

Each abstract must be made upon a form approved and furnished by the BMV. The abstract must include the name and address of the person charged, the number of the person's driver's or commercial driver's license, probationary driver's license, or temporary instruction permit, the registration number of the vehicle involved, the nature of the offense, the date of the offense, the date of hearing, the plea, the judgment, or whether bail was forfeited, and the amount of the fine or forfeiture. (R.C. 4510.03(C) and repeal of R.C. 4507.021(C)(1).)

United States District Courts--records and abstract

Existing law authorizes a United States District Court that has jurisdiction within Ohio to utilize the record and abstract provisions for point accumulation in regard to offenses occurring on federal property within Ohio. The bill consolidates these provisions of existing law. Under the bill, a United States District Court that has jurisdiction within Ohio may utilize the record and abstract provisions set forth above in regard to any case in which a person is charged with any violation of specific sections of the Motor Vehicle Law (R.C. 4511.01 to 4511.771 and 4513.01 to 4513.36) or of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets located on federal property within this state. The District Court also may forward to the BMV an abstract upon the conviction of any person of aggravated vehicular homicide or vehicular homicide or of a felony in the commission of which a vehicle was used.

If a United States District Court acts under this authority, it must follow the procedures described above under "***Record and abstract***," for recording cases, preparing and forwarding an abstract, and using the form from the BMV. The BMV must accept and process an abstract received from a United States District Court under this provision in the same manner as it accepts and processes an abstract received from a county judge, mayor of a mayor's court, or clerk of a court of record. (R.C. 4510.031 and repeal of R.C. 4507.021.)

Existing law provides that if a United States District Court whose jurisdiction lies within Ohio suspends, revokes, or cancels, or forfeits the driver's or commercial driver's license or, permit, or nonresident operating privileges of any person under the federal "Assimilative Crimes Act," that suspension, revocation, cancellation, or forfeiture is deemed to operate in the same manner and to have the same effect throughout this state as if it were imposed under the laws of this state by a judge of a court of record of this state. In that type of case, the district court must observe the prescribed procedures and utilize the forms prescribed by the Registrar. The BMV must make the appropriate notation or record and take any other action that is prescribed or permitted. The bill relocates this provision, revises the wording, removes references to "revoke and forfeit," and adds nonresident operating privileges as being subject to suspension or cancellation under this authority. (R.C. 4510.06, relocated from existing R.C. 4507.1610.)

Charge of a specified type dismissed or reduced--record and abstract

The bill relocates the existing procedures that govern record keeping when certain types of charges are dismissed or reduced or when there is a bail forfeiture. Existing law and the bill require the abstract to set forth that the specified type of charge was dismissed or reduced, indicate that it was dismissed or reduced, and indicate that the violation resulting in the conviction or bail forfeiture arose out of the same facts and circumstances and the same act as did the charge that was dismissed or reduced under the following sets of facts (R.C. 4510.032(A) and (B) and repeal of R.C. 4507.021(C)(2)):

(1) The violation of which the person was convicted or in relation to which the person forfeited bail arose out of the same facts and circumstances and the same act as did the charge that was dismissed or reduced and both of the following circumstances apply:

(a) The person was charged with a state OVI or OVUAC violation or a municipal OVI violation (a violation of any ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or relating to operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine) and that charge is dismissed or reduced; see "***Definition of "municipal OVI" for purposes of state OVI, etc.***," below;

(b) The person is convicted of or forfeits bail in relation to a violation of any other section of the Revised Code or of any ordinance that regulates the operation of vehicles, streetcars, and trackless trolleys on highways and streets but that does *not* relate to OVI or OVUAC.

(2) The person was charged with driving under suspension, driving under OVI suspension, or driving under financial responsibility suspension or any municipal ordinance that is substantially equivalent to any of those offenses, that charge is dismissed or reduced, and the person is convicted of or forfeits bail in relation to a violation of any other law or any other ordinance that regulates the operation of vehicles, streetcars, and trackless trolleys on highways and streets that arose out of the same facts and circumstances as did the charge that was dismissed or reduced.

Juveniles--record and abstract

Under existing law, if a child has been adjudicated an unruly or delinquent child or a juvenile traffic offender for having committed any act that if committed by an adult would be a drug abuse offense, any alcohol-related disorderly conduct violation, or a state OVI or OVUAC violation, the court must notify the BMV, by means of an abstract of the court record, within ten days after the adjudication. If a court requires a child to attend a drug abuse or alcohol abuse education, intervention, or treatment program, the abstract also must include the name and address of the operator of the program and the date that the child entered the program. If the child satisfactorily completes the program, the court, immediately upon receipt of the information, must send to the BMV an updated abstract that also must contain the date on which the child satisfactorily completed the program. The bill relocates these provisions without substantive change. (R.C. 4510.032(C) and repeal of R.C. 4507.021(D)(2).)

Registration restriction--record and abstract

Under existing law and the bill, if a person was convicted of or pleaded guilty to driving under suspension, driving under OVI suspension, or driving under financial responsibility suspension, a violation of a municipal ordinance substantially equivalent to any of those offenses, state OVI, wrongful entrustment, or a violation of a municipal OVI ordinance (see "***Definition of "municipal OVI" for purposes of state OVI, etc.***," below), and if the Registrar and all deputy registrars are prohibited from accepting an application for the registration of, or registering, any motor vehicle in the name of that person because of an order for criminal forfeiture, the abstract of the case must specifically set forth these facts and clearly indicate the date on which the order of criminal forfeiture was issued or would have been issued but for the operation of the criminal forfeiture procedures. If the Registrar receives an abstract containing this information relating to a person, the Registrar must take all necessary measures to prevent the Registrar's office or any deputy registrar from accepting from the person, for the period of time ending five years after the date on which the order was issued or would have been issued, any new application for the registration of any motor

vehicle in the name of the person. (R.C. 4510.034 and repeal of R.C. 4507.021(C)(3).)

Misconduct in office--noncompliance with records and abstract requirements

The bill relocates an existing provision establishing that the purposeful failure or refusal of any person to comply with any provision of the law regarding the recording of violations and preparation of an abstract for the suspension of a license, privilege, or permit based on point accumulation, as described above and in the next three parts of this analysis, constitutes misconduct in office and is a ground for removal of the person from the office (R.C. 4510.035 and repeal of R.C. 4507.021(E)).

Bureau of Motor Vehicle's duties--records and abstracts

The bill relocates and continues provisions of existing law that require the BMV to record within ten days after receipt and to keep at its main office all abstracts received from a court or mayor's court. The BMV must maintain records of convictions and bond forfeitures for any violation of a state law or a municipal ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways and streets, except a violation related to parking a motor vehicle. (R.C. 4510.036(A) and repeal of 4507.021(F).)

Under those provisions, every court of record or mayor's court before which a person is charged with a violation for which points are chargeable must assess and transcribe to the abstract of conviction report that is furnished by the BMV to the court the number of points chargeable in the correct space assigned on the reporting form. Similarly, a United States District Court whose jurisdiction lies within Ohio and before whom a person is charged with a violation for which points are chargeable may assess and transcribe to the abstract of conviction report that is furnished by the BMV the number of points chargeable in the correct space assigned on the reporting form. If the federal court so assesses and transcribes the points chargeable for the offense and furnishes the report to the BMV, the BMV must record the points in the same manner as those assessed and transcribed by a court of record or mayor's court. (R.C. 4510.036(B) and repeal of R.C. 4507.021(G).)

Points assessed for traffic violations

With one exception, related to speeding offenses, as described below, the bill generally relocates the formula for assessing points without making substantive changes to the points assessed (R.C. 4507.021(G), repealed, and 4510.036(C)):

Regarding speeding offenses, under existing law, two points are assessed for a violation of any law or ordinance pertaining to speed except for violations of the 55 or 65 miles per hour speed limit. Existing law assesses two points upon a first violation of the 55 or 65 miles per hour speed limit, at a speed in excess of 75 miles per hour. Upon a second violation within one year of the first violation of the 55 or 65 miles per hour speed limit, one point is assessed for each increment of five miles per hour in excess of the posted speed limit, exclusive of the first five miles per hour over the limitation. Upon a third or subsequent violation within one year of the first violation of the 55 or 65 miles per hour speed limit, two points are assessed for each increment of five miles per hour in excess of the posted speed limit, exclusive of the first five miles per hour over the limitation.

But under the bill, four points are assessed when the speed exceeds the lawful speed limit by 30 miles per hour or more. Two points are assessed if the speed exceeds the lawful speed limit of 55 miles per hour or more by more than ten miles per hour. When the speed exceeds the lawful speed limit of less than 55 miles per hour by more than five miles per hour, two points are assessed. No points are assessed if the speed does not exceed these specified amounts. (R.C. 4510.036(C)(11) and repeal of R.C. 4507.021(G)(12) through (14).)

As under existing law, the bill establishes that two points are assessed for all moving violations reported to the Registrar in an abstract for which no points are specifically determined. The bill defines "moving violation" as any violation of any statute or ordinance that regulates the operation of vehicles, streetcars, or trackless trolleys on the highways or streets, and specifies that the term does not include: (1) a seat belt violation under R.C. 4513.263 (or a substantially equivalent municipal ordinance), (2) a violation of any statute or ordinance regulating pedestrians or the parking of vehicles, (3) vehicle size or load limitations, (4) vehicle fitness requirements, or (5) vehicle registration. By use of this definition, the bill retains the provision of existing law that excludes from the assessment of points the excepted violations (R.C. 4510.01(E), 4510.036(C)(13), and repeal of R.C. 4507.021.)

The bill continues existing law and provides that if a person is convicted of or forfeits bail for two or more offenses arising out of the same facts and points are chargeable for each of the offenses, points may be charged for only the conviction or bond forfeiture for which the greater number of points is chargeable. If the number of points chargeable for each offense is equal, only one offense may be recorded, and points may be charged only for that offense. Further, if points are entered for a bond forfeiture and the person is acquitted of the offense, upon notification, the BMV must delete the points. (R.C. 4510.036(D) and (E) and repeal of R.C. 4507.021(H) and (I).)

Administrative procedures for repeat traffic offender license suspension

Generally. The procedures in the bill for suspending a person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege because of the accumulation of points against the person's driving record are based on existing law. When the Registrar determines that the total points charged against any person exceed five, the Registrar must send a warning letter to the person at the person's last known address by regular mail. The warning letter must list the reported violations that are the basis of the points charged, list the number of points charged for each violation, and outline the suspension provisions. (R.C. 4510.037(A) and repeal of R.C. 4507.021.)

Remedial driving course. Any person against whom more than five but less than 12 points have been charged may obtain a credit of two points against the total points charged against the person by enrolling in, and completing, a course of remedial driving instruction that is approved by the Director of Public Safety. The person may enroll only one time in a course of remedial driving instruction for that purpose. In a new provision, the bill prohibits the Registrar from deducting points for a person who completes an approved course of remedial driving instruction pursuant to a judge's order as a condition for the return of full driving privileges after a suspension imposed by the court ends. (R.C. 4510.037(C) and repel of R.C. 4507.021(L).)

Points suspension. When the total points charged against any person, within any two-year period beginning on the date of the first conviction within the two-year period, is equal to 12 or more, the Registrar must send a written notice to the person listing the reported violations that are the basis of the points charged, listing the number of points charged for each violation, and stating that because the total number of points charged against the person within the applicable two-year period is equal to 12 or more the Registrar is imposing a Class D (six months) administrative suspension of the person's driver's or commercial driver's license or permit or nonresident operating privileges. The notice also must state that the suspension is effective on the 20th day after the mailing of the notice, unless the person files a petition appealing the determination and suspension in the appropriate court. By filing the appeal, the person agrees to pay the cost of the proceedings in the appeal of the determination and suspension and alleges that the person can show cause why the person's driver's or commercial driver's license or permit or nonresident operating privileges should not be suspended. (R.C. 4510.037(B) and repeal of R.C. 4507.021(K).)

Credit for judicial suspension. When a judge of a court of record suspends a person's driver's or commercial driver's license or permit or nonresident operating privilege and charges points against the person for the offense that

resulted in the suspension, the Registrar must credit that period of suspension against the time of any subsequent suspension imposed for which those points were used to impose the subsequent suspension. Similarly, when a United States District Court suspends a person's driver's or commercial driver's license or permit or nonresident operating privileges and the District Court prepares an abstract and charges points against the person for the offense that resulted in the suspension, the Registrar must credit the period of suspension imposed by the District Court against the time of any subsequent suspension imposed for which the points were used to impose the subsequent suspension. (R.C. 4510.037(D) and repeal of R.C. 4507.021(M).)

Appeal. Upon the written request of a licensee who files a petition as described above under "***Points suspension***," the Registrar must furnish the licensee a certified copy of the Registrar's record of the convictions and bond forfeitures of the person, including the name, address, and date of birth of the licensee; the name of the court in which each conviction or bail forfeiture took place; the nature of the offense that was the basis of the conviction or bond forfeiture; and any other information that the Registrar considers necessary. If the record indicates that 12 points or more have been charged against the person within a two-year period, it is prima facie evidence that the person is a repeat traffic offender, and the Registrar must suspend the person's license, permit, or privilege.

In hearing the petition and determining whether the person filing the petition has shown cause why the person's license, permit, or privilege should not be suspended, the court must decide the issue on the record certified by the Registrar and any additional relevant, competent, and material evidence that either the Registrar or the person whose license is sought to be suspended submits. (R.C. 4510.037(E) and repeal of R.C. 4507.021(N).)

Existing law and the bill establish who will represent the Registrar in the court proceedings, based on the court where the petition of appeal is filed. (R.C. 4510.037(F) and repeal of R.C. 4507.021(N).)

If the court determines that a person who filed a petition has failed to show cause why the person's license, permit, or privileges should not be suspended, the court must assess against the person the cost of the proceedings in the appeal of the determination and suspension and must impose the applicable suspension or suspend all or a portion of the suspension and impose any conditions or probation upon the person that the court considers proper. If the court determines that a person who filed a petition has shown cause why the person's license, permit, or privileges should not be suspended, the costs of the appeal proceeding are paid out of the county treasury of the county in which the proceedings were held. (R.C. 4510.037(G) and repeal of R.C. 4507.021(N).)

A person whose license, permit, or privileges are suspended based on the accumulation of points is not entitled to apply for or receive a new driver's or commercial driver's license or permit or to request or be granted nonresident operating privileges during the effective period of the suspension. When the suspension or other penalty involving the surrender of a license or permit is terminated and upon the request of the person whose license or permit was suspended or surrendered, the Registrar must return or reissue the license or permit to the person if the person has complied with all of the requirements for reinstatement (see below). (R.C. 4510.037(H) and (I) and repeal of R.C. 4507.021(N).)

Suspension violation. Under existing law and the bill, if a person whose driver's or commercial driver's license or permit or nonresident operating privileges are suspended as a repeat traffic offender operates any motor vehicle upon any public roads and highways during the suspension, the person is guilty of a misdemeanor of the first degree. The court must sentence the offender to a minimum term of three days in jail, and no court may suspend the first three days of the jail time. (R.C. 4510.037(J) and repeal of R.C. 4507.021(N).)

Law unaffected by the bill allows nonresidents to operate any motor vehicle upon any highway in Ohio without examination or a license upon the condition the nonresidents may be required to prove lawful possession of a motor vehicle or their right to operate a motor vehicle and to establish proper identity (R.C. 4507.04, not in the bill). Existing law and the bill recognize that when the Registrar has specific statutory authority, the Registrar may suspend that privilege of driving a motor vehicle on the public roads and highways of Ohio (R.C. 4510.037(K) and repeal of R.C. 4507.021(O)).

Modification of suspension for life or in excess of 15 years

Under the bill, a person whose driver's or commercial driver's license has been suspended for life under a Class 1 suspension or as otherwise provided by law or has been suspended for a period in excess of 15 years under a Class 2 suspension may file a motion with the sentencing court for modification or termination of the suspension; such a motion may be heard only once. The person filing the motion must demonstrate all of the following (R.C. 4510.54(A)):

(1) At least 15 years have elapsed since the suspension began.

(2) For the past 15 years, the person has not been found guilty of any felony, any offense involving a moving violation under federal law, the law of Ohio, or the law of any of its political subdivisions, or any violation of a license suspension under state law or a substantially equivalent municipal ordinance (see the definition of "moving violation" set forth above under "***Points assessed***").

(3) The person has proof of financial responsibility, a policy of liability insurance in effect that meets the minimum required standard, or proof, to the satisfaction of the Registrar, that the person is able to respond in damages in an amount at least equal to the minimum amounts specified in existing law.

(4) If the suspension was imposed because the person was under the influence of alcohol, a drug of abuse, or combination of them at the time of the offense, or because at the time of the offense the person's whole blood, blood serum or plasma, breath, or urine contained at least the concentration of alcohol prohibited under the offense of state OVI, the person also must demonstrate all of the following: (a) that the person successfully completed an alcohol, drug, or alcohol and drug treatment program, (b) that the person has not abused alcohol or other drugs for a period satisfactory to the court, and (c) that for the past 15 years, the person has not been found guilty of any alcohol-related or drug-related offense.

Upon receipt of a motion for modification or termination of the lifetime suspension, the court may schedule a hearing on the motion. If scheduled, the hearing must be conducted in open court within 90 days after the motion is filed. The court must notify the person whose license was suspended and the prosecuting attorney of the date, time, and location of the hearing. The prosecuting attorney must notify the victim or the victim's representative of the date, time, and location of the hearing. The person who seeks modification or termination of the suspension has the burden to demonstrate, under oath, that the person meets the requirements under (1) through (4), above. At the hearing, the court must afford the offender or the offender's counsel an opportunity to present oral or written information relevant to the motion. The court also must afford a similar opportunity to provide relevant information to the prosecuting attorney and the victim or victim's representative.

Before ruling on the motion, the court must take into account the person's driving record, the nature of the offense that led to the suspension, and the impact of the offense on any victim. In addition, if the offender is eligible for modification or termination of the suspension, the court must consider whether the person committed any offense other than a felony or a moving violation while under suspension and determine whether the offense is relevant to a modification of the lifetime suspension. The court may modify or terminate the suspension subject to any considerations it considers proper if it finds that allowing the person to drive is not likely to present a danger to the public. After the court makes a ruling on a motion filed, the prosecuting attorney must notify the victim or the victim's representative of the court's ruling. (R.C. 4510.54(B) to (D).)

If a court modifies a person's license lifetime suspension and the person subsequently is found guilty of any moving violation or of any substantially

equivalent municipal ordinance that carries as a possible penalty the suspension of a person's driver's or commercial driver's license, the court may reimpose the Class 1 or other lifetime suspension or the Class 2 suspension, whichever is applicable (R.C. 4510.54(E)).

Conditions for the return of full driving privileges after certain suspensions

Existing law

Existing law establishes the conditions under which any person whose driver's or commercial driver's license or permit is suspended, or who is put on probation or granted limited or occupational driving privileges, as a repeat traffic offender (points) or for OMVUAC, may retain the person's license or have the person's driving privileges reinstated. The conditions specify that the person must comply with each of the following (R.C. 4507.022):

(1) The person must successfully complete a course of remedial driving instruction approved by the Director of Public Safety, provided the person commences taking the course after the person's driver's or commercial driver's license or permit is suspended and a minimum of 25% of the number of hours of instruction included in the course must be devoted to instruction on driver attitude.

(2) The person must submit to a driver's license examination or a physical examination, or both, and be found by the Registrar to be qualified to operate a motor vehicle.

(3) The person must give and maintain proof of financial responsibility.

The course required under (1), above, must devote a number of hours to instruction in the area of alcohol and drugs and the operation of motor vehicles. The instruction must include, but is not limited to, a review of the laws governing the operation of a motor vehicle while under the influence of alcohol, drugs, or both, the dangers of operating a motor vehicle while under the influence of alcohol, drugs, or both, and other information relating to the operation of motor vehicles and the consumption of alcoholic beverages and use of drugs. The Director of Public Safety, in consultation with the Director of Alcohol and Drug Addiction Services, must prescribe the content of the instruction. The number of hours devoted to the area of alcohol and drugs and the operation of motor vehicles shall comprise a minimum of 25% of the number of hours of instruction included in the course. (R.C. 4507.022.)

Operation of the bill

The bill relocates these requirements for the retention of the license and the return of full driving privileges for the specified categories of persons, conforms

the provisions to the bill's relocation of the repeat traffic offender and OVUAC suspensions, and generally retains the conditions under which any such person may retain the license or regain full driving privileges. It removes the reference to the requirements applying to a person who is put on probation. It also replaces the references to the requirements applying to persons under suspension as a repeat traffic offender (points) or for OMVUAC with references to the Revised Code sections to which the bill relocates those suspensions.

In regard to the course of remedial driving instruction that the person must complete, the bill eliminates the condition that the person commence taking the course after the person's license or permit is suspended. Consistent with the bill's change from OMVI to OVI (see "***State OMVI--state OVI***," below), in five places the bill requires that the remedial course provide instruction in the operation of *vehicles*, not *motor vehicles*. In two places, it also replaces a reference in existing law to the operation of a motor vehicle while under the influence of alcohol, drugs, or *both* with a reference to alcohol, drugs, or *a combination of them.* (R.C. 4510.038, relocated from R.C. 4507.022.)

Limited driving privileges

Existing law

In numerous circumstances in which a person's driver's license or permit has been suspended, existing law specifically permits a court to grant *occupational driving privileges* to the person during the suspension, if specified criteria are satisfied. The suspensions in relation to which a court is specifically authorized to grant the privileges include: (1) a suspension imposed upon a person for a conviction of endangering children based on the offender's operation of a vehicle while committing state OMVI or OMVUAC and with a child in the vehicle (R.C. 2919.22(G)), (2) a suspension imposed upon a person for a conviction of state or municipal OMVI (R.C. 4507.16(F)), (3) a suspension imposed upon a person for violating the terms of a prior grant of occupational driving privileges or the terms of a prior order issued in relation to a vehicle-related and alcohol-related offense that restricted the person to driving a vehicle equipped with an ignition interlock device (R.C. 2951.02(G) and 4507.16(F)), (4) a suspension imposed upon a person under the Vehicle Implied Consent Law for submitting to a requested chemical test and having a prohibited concentration of alcohol in the person's blood, breath, or urine (R.C. 4507.16(F)), (5) a suspension imposed upon a person for a conviction of state or municipal OMVUAC (R.C. 4507.16(G)), (6) a suspension imposed upon a person for conviction or adjudication of at least three specified traffic violations prior to the person's 18th birthday (R.C. 4507.162(C)), (7) a suspension imposed upon a person convicted or adjudicated in another state or federal court of having committed an offense similar to state OMVI or state OMVUAC (R.C. 4507.169(E)), (8) a suspension imposed upon a person for not

properly maintaining proof of financial responsibility, as described above in "***Financial responsibility suspension***" (R.C. 4509.105), and (9) a suspension imposed upon a person under the Vehicle Implied Consent Law for refusing to submit to a requested chemical test (R.C. 4511.191(I)).

A court may not grant occupational driving privileges to a person described in clauses (1), (2), (3), (4), (5), (6), or (9) of the preceding paragraph if, *within the preceding seven years*, the person has been convicted of three or more specified vehicle-related and alcohol-related offenses (R.C. 2919.22(G)(2), 4507.16(F)(1) and (G), and 4511.191(I)) and may not grant occupational driving privileges to a person described in clauses (7) or (8) of the preceding paragraph if, *within the preceding five years*, the person has been convicted of certain specified offenses (R.C. 4507.169(E) and 4509.105). And for persons described in clauses (2), (3), (4), (5), (7), and (9) of the preceding paragraph, existing law specifies a period of the suspension (generally referred to as a "hard suspension") during which a court never may impose occupational driving privileges or "suspend the suspension" (R.C. 4507.16(F)(2), (G), and (I), 4507.169(E), and 4511.191(I)). Existing law also specifies a 30-day "hard suspension" for judicial suspensions imposed under R.C. 4507.16(A) during which the court cannot "suspend the suspension," as described above in "***General judicial suspensions***" (R.C. 4507.16(I)).

Operation of the bill

Generally. The bill expands, from "occupational driving privileges" to "limited driving privileges," the concept of driving privileges that may be granted during the time a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege is suspended. For purposes of the Motor Vehicle Law and the penal laws, the bill defines "limited driving privileges" as the privilege to operate a motor vehicle that a court grants, under the new provision described below, to a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended (R.C. 4501.01(SS)).

In a new provision, the bill allows a court to grant limited driving privileges during any suspension imposed by the court, unless expressly prohibited by R.C. 2919.22, R.C. 4510.13, or any other provision of law. The bill provides that the privileges granted be for the limited purposes of: (1) occupational, educational, vocational, or medical purposes, (2) taking the driver's or commercial driver's license examination, or (3) attending court-ordered treatment. In granting the privileges, the court must specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. (R.C. 4510.021(A).)

In a new provision, the bill establishes procedures governing the granting of limited driving privileges during an administrative suspension imposed by the BMV. It provides that, unless expressly authorized by law, a court cannot grant limited driving privileges during any BMV suspension. To obtain limited driving privileges during a BMV suspension, a petition may be filed in a court of record in the county in which the person under suspension resides. A person who is not an Ohio resident must file any petition for privileges in the Franklin County Municipal Court, or, if the person is a minor, in the Franklin County Juvenile Court. If a court grants limited driving privileges under this provision, the privileges must be for any of the limited purposes described in the preceding paragraph. (R.C. 4510.021(B).)

The bill authorizes a court, as a condition of granting limited driving privileges, to do either of the following: (1) require that the person's vehicle be equipped with an immobilizing or disabling device, subject to exceptions for persons who operate a vehicle owned by the person's employer and for out-of-state vehicles, when the use of an immobilizing or disabling device is not otherwise required by law (see "***Immobilizing or disabling device***," below), or (2) require that the person's vehicle be equipped with restricted license plates, subject to exceptions for persons who operate a vehicle owned by the person's employer and for out-of-state vehicles, when the use of restricted license plates is not otherwise required by law (see "***Specified limitations***" and "***Exceptions, if the use of restricted license plates is imposed as a condition of the privileges***," below). Also, the court must require the offender to provide proof of financial responsibility before granting limited driving privileges. (R.C. 4510.021(C) and (E).)

Similar to existing law, the bill specifically states that any person whose license, permit, or privilege has been suspended for a state or municipal OVI or OVUAC conviction or under a Motor Vehicle Implied Consent law refusal or prohibited concentration suspension may file a petition for limited driving privileges during the suspension. The petition must be filed in the court with jurisdiction over the place of arrest, and, subject to the prohibitions and limitations described below in "***Specified limitations***," the court may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed. However, the court may not grant the privileges for employment as a driver of a commercial motor vehicle to any person who is disqualified from operating a commercial vehicle under R.C. 4506.16. (R.C. 4510.13(B).)

Practice driving for juveniles. When a court grants limited driving privileges under any provision of law during the suspension of the temporary instruction permit or probationary driver's license of any person under 18 years of age, the court may include as a purpose of the privilege the person's practicing of

driving with the person's parent, guardian, or other custodian during the period of the suspension. If the court grants limited driving privileges for this purpose, the court, in addition to any other conditions it imposes, must impose as a condition that the person exercise the privilege only when a parent, guardian, or custodian of the person who holds a current valid Ohio driver's or commercial driver's license actually occupies the seat beside the person in the vehicle the person is operating. (R.C. 4510.021(D).)

Specified limitations. The bill enacts a provision that specifies that, in any case in which a court grants limited driving privileges to an offender whose driver's or commercial driver's license or permit is under suspension for a state or municipal OVI conviction, the court must impose as a condition of the privileges that the offender display on the vehicle that is driven subject to the privileges restricted license plates issued under R.C. 4503.231, subject to exceptions for persons who operate a vehicle owned by the person's employer and for out-of-state vehicles (R.C. 4510.13(A)(7) and 4511.19(G)(4)). It enacts a similar provision regarding a grant of limited driving privileges under a suspension imposed for driving under a suspension imposed for an OMVI violation or under the Vehicle Implied Consent Law, as described above in "***Driving under a suspension imposed for an OMVI conviction or under the Vehicle Implied Consent Law; violating conditions of occupational driving privileges***" (R.C. 4510.14(E)).

Regarding the provisions of existing law that prohibit a court from granting driving privileges to a person under a suspension if the person has been convicted or adjudicated of having committed a specified number of traffic violations within the preceding seven years and that establish a "hard suspension" period: (1) for the endangering children suspension, the bill retains the prior conviction prohibition and reduces the "look-back period" it contains from seven years to *six years* (R.C. 2919.22(G)(2) and 4510.021), (2) for the state or municipal OVI conviction suspension, the bill retains the prior conviction prohibition, reduces the "look-back period" it contains from seven years to *six years*, and retains the "hard suspension" provisions (R.C. 4510.021, 4510.13(A)(2) to (5), 2919.22(G)(2), and 4511.19(G), and repeal of 4507.16(F)), (3) for the state or municipal OVUAC conviction suspension, the bill retains the prior conviction prohibition, reduces the "look-back period" it contains from seven years to *six years*, and retains the "hard suspension" period (R.C. 4510.021, 4510.13(A)(2) to (5), 2919.22(G)(2), and 4511.19(H), and repeal of R.C. 4507.16(G)), (4) for the Implied Consent Law prohibited concentration and refusal suspensions, the bill retains the prior conviction prohibition, reduces the "look-back period" it contains from seven years to *six years*, and retains the "hard suspension" period (R.C. 4510.021, 4510.13(A)(3) to (6), 4511.191, 2919.22(G)(2), and 4511.197(E), and repeal of R.C. 4507.16(F) and 4511.191(I)), (5) for the juvenile suspensions imposed for two or three convictions of any of the list of specified offenses or for state or

municipal OVI or OVUAC, the bill retains the prior conviction prohibition and reduces the "look-back period" it contains from seven years to *six years* (R.C. 4510.31(C)(3) and 2919.22(G)(2)), (6) for the suspension imposed for failing to maintain proof of financial responsibility, the bill modifies both the prior conviction prohibition and the "hard suspension" period provisions, as described above in "***Financial responsibility suspension***" (R.C. 4509.101, and repeal of R.C. 4509.105), and (7) for the suspension imposed for convictions in other jurisdictions, the bill reduces the "look-back period" contained in the prior conviction prohibition to *six years*, and reduces the "look-back period" used in determining the "hard suspension" period from seven years to *six years* (R.C. 4510.17(E)). For the ignition interlock order violation suspension, the bill appears to eliminate the prior conviction prohibition and the "hard suspension" period (R.C. 2951.02(G) and 4510.021, and repeal of R.C. 4507.16(F)).

Exceptions, if the use of restricted license plates is imposed as a condition of the privileges. The bill provides that, if a person has been granted limited driving privileges with a condition of the privileges being that the person must display on the vehicle that is driven under the privileges restricted license plates that are described in R.C. 4503.231, all of the following apply (R.C. 4503.231(B)):

(1) If a motor vehicle to be driven under the privileges is owned by the person's employer and if the person is required to operate that motor vehicle in the course and scope of the person's employment, the person may operate that vehicle without displaying on that vehicle restricted license plates issued under R.C. 4503.231 if the employer has been notified that the person has limited driving privileges and of the nature of the restriction and if the person has proof of the employer's notification in the person's possession while operating the employer's vehicle for normal business duties. A motor vehicle owned by a business that is partly or entirely owned by the person with the limited driving privileges is not a motor vehicle owned by an employer, for purposes of this provision.

(2) If a motor vehicle to be driven under the limited driving privileges is registered in a state other than Ohio, instead of displaying on that vehicle restricted license plates issued under R.C. 4503.231, the person with the limited driving privileges must display on the vehicle a decal, as prescribed by the Registrar, that states that the vehicle is subject to limited driving privileges in Ohio and that describes the restriction. The decal must be displayed on the bottom left corner of the vehicle's back window or, if there is no back window, on the bottom left corner of the vehicle's windshield. The BMV must adopt rules providing for the decentralization of the issuance of such decals, with the rules providing for the issuance of the decals by at least one agency in each county.

Immobilizing or disabling device

Existing law

Existing law prohibits any person from knowingly renting, leasing, or lending a motor vehicle to any offender with restricted driving privileges, unless the vehicle is equipped with a certified, functioning ignition interlock device; the prohibition does not apply in cases of a substantial emergency when no other person is reasonably available to drive in response to the emergency. Also under existing law, any offender with restricted driving privileges who rents, leases, or borrows a motor vehicle from another person must notify the person who rents, leases, or lends the motor vehicle to the offender that the offender has restricted driving privileges and of the nature of the restriction. Whoever violates either of these provisions is guilty of a first degree misdemeanor. (R.C. 4511.83(B) and 4511.99(J).)

Existing law allows any offender with restricted driving privileges who is required to operate a motor vehicle owned by the offender's employer in the course and scope of the offender's employment to operate that vehicle without the installation of an ignition interlock device, provided that the employer has been notified that the offender has restricted driving privileges and of the nature of the restriction and provided further that the offender has proof of the employer's notification in the offender's possession while operating the employer's vehicle for normal business duties. A motor vehicle owned by a business that is partly or entirely owned or controlled by an offender with restricted driving privileges is not considered a motor vehicle owned by an employer, for purposes of driving privileges. (R.C. 4511.83(B)(3).)

If a court imposes the use of an ignition interlock device as a condition of granting occupational driving privileges to a person whose license has been suspended for a state or municipal OMVI conviction, under the Vehicle Implied Consent Law, or for violation of an ignition interlock provision, the court must require the offender to provide proof of compliance to the court at least once quarterly or more frequently as may be ordered by the court. If a court imposes the use of an ignition interlock device as a condition of probation, the court must require the offender to provide proof of compliance to the court or probation officer prior to issuing any driving privilege or continuing the probation status. In either case in which a court imposes the use of such a device, the offender, at least once quarterly or more frequently as may be ordered, must have the device inspected for accurate operation and must provide the results of the inspection to the court or, if applicable, to the offender's probation officer. (R.C. 4511.83(C).)

Existing law requires the Director of Public Safety, upon consultation with the Director of Health, to certify ignition interlock devices and to publish and

make available to the courts, without charge, a list of approved devices together with information about the manufacturers of the devices and where they may be obtained. The cost of obtaining the certification of an ignition interlock device must be paid by the manufacturer of the device to the Director of Public Safety and must be deposited in the Drivers' Treatment and Intervention Fund.

The Director of Public Safety must adopt and publish rules setting forth the requirements for obtaining the certification of an ignition interlock device. No ignition interlock device may be certified unless it meets those requirements. The requirements must include provisions for setting a minimum and maximum calibration range and specifications that the device complies with all of the following (R.C. 4511.83(D)):

(1) It does not impede the safe operation of the vehicle.

(2) It has features that make circumvention difficult and that do not interfere with the normal use of the vehicle.

(3) It correlates well with established measures of alcohol impairment.

(4) It works accurately and reliably in an unsupervised environment.

(5) It is resistant to tampering and shows evidence of tampering if tampering is attempted.

(6) It is difficult to circumvent and requires premeditation to do so.

(7) It minimizes inconvenience to a sober user.

(8) It requires a proper, deep-lung breath sample or other accurate measure of the concentration by weight of alcohol in the breath.

(9) It operates reliably over the range of automobile environments.

(10) It is made by a manufacturer who is covered by product liability insurance.

In the certification or approval of ignition interlock devices, the Director of Public Safety may adopt the guidelines, rules, regulations, studies, or independent laboratory tests performed and relied upon by other states, or their agencies or commissions.

Existing law requires the Director of Public Safety to adopt rules for the design of a warning label that must be affixed to each ignition interlock device upon installation. The label must contain a warning that any person tampering,

circumventing, or otherwise misusing the device is subject to a fine, imprisonment, or both and may be subject to civil liability.

Existing law prohibits all of the following: (1) any offender with restricted driving privileges, during any period that the offender is required to operate only a motor vehicle equipped with an ignition interlock device, from requesting or permitting any other person to breathe into the device or start a motor vehicle equipped with the device, for the purpose of providing the offender with an operable motor vehicle, (2) any person, other than the offender, from breathing into an ignition interlock device or starting a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to an offender with restricted driving privileges, and (3) any unauthorized person from tampering with or circumventing the operation of an ignition interlock device. Violation of any of these prohibitions is a first degree misdemeanor. (R.C. 4511.83(E), repealed, and 4511.99(J).)

Operation of the bill

The bill reorganizes and relocates, but retains much of, the law discussed above; however, the bill expands that law to allow the use of an "immobilizing or disabling device" and is not restricted to ignition interlock devices (R.C. 4510.43 and repeal of 4511.83). The bill defines an "immobilizing or disabling device" as a device approved by the Director of Public Safety that may be ordered by a court to be used by an offender as a condition of limited driving privileges. "Immobilizing or disabling device" includes an ignition interlock device and any prototype device that is used according to protocols designed to ensure efficient and effective monitoring of limited driving privileges granted by a court to an offender. (R.C. 4510.01(D).) A "prototype device" is defined by the bill as any testing device to monitor limited driving privileges that has not yet been approved by the Director of Public Safety (R.C. 4510.01(G)).

As under existing law, the bill requires the Director of Public Safety, upon consultation with the Director of Health and in accordance with the Administrative Procedure Act, to certify immobilizing and disabling devices and to publish and make available to the courts, without charge, a list of approved devices together with information about the manufacturers of the devices and where they may be obtained. The manufacturer of an immobilizing or disabling device continues to be required to pay the cost of obtaining the certification of the device, and the payments are deposited in the Drivers' Treatment and Intervention Fund. As under existing law, the bill requires the Director to adopt in accordance with the Administrative Procedure Act and publish rules setting forth the requirements for obtaining the certification of an immobilizing or disabling device. The Director cannot certify an immobilizing or disabling device unless it meets the requirements specified and published by these rules. In a new provision, the bill

specifies that a certified device may consist of an ignition interlock device, an ignition blocking device initiated by time or magnetic or electronic encoding, an activity monitor, or any other device that reasonably assures compliance with an order granting limited driving privileges. The requirements for an immobilizing or disabling device that is an ignition interlock device must include provisions for setting a minimum and maximum calibration range and must include specifications that the device complies with the existing criteria described above in (1) to (10) under "***Existing law***."

As under existing law, the Director may adopt the guidelines, rules, regulations, studies, or independent laboratory tests performed and relied upon by other states, or their agencies or commissions, in the certification or approval of immobilizing or disabling devices. (R.C. 4510.43(A)(1), (2), and (3).)

The bill relocates but does not change the requirements for the design of a warning label that must be affixed to each immobilizing or disabling device upon installation (R.C. 4510.43(A)(4)).

The bill allows for the use of a prototype device in a pilot program. A court considering the use of a prototype device in a pilot program must advise the Director, 30 days before the use, of the prototype device and its protocol, methodology, manufacturer, and licensor, lessor, other agent, or owner, and the length of the court's pilot program. A prototype device may not be used for the offenses of driving under OVI suspension, state OVI, or state OVUAC, for a violation of a municipal OVI ordinance, or in relation to a suspension under the Vehicle Implied Consent Law. A court that uses a prototype device, periodically during the existence of the program and within 14 days after termination of the program, must report in writing to the Director regarding the effectiveness of the prototype device and the program. (R.C. 4510.43(B).)

The bill provides two exceptions regarding persons with limited driving privileges who, as a condition of the privileges, may operate a motor vehicle only if it is equipped with an immobilizing or disabling device. Under the bill, if a person has been granted limited driving privileges that include such a condition, all of the following apply (R.C. 4510.43(C)):

(1) If a motor vehicle to be driven under the privileges is owned by the person's employer and if the person is required to operate that motor vehicle in the course and scope of the offender's employment, the person may operate that vehicle without the installation of an immobilizing or disabling device, provided that the employer has been notified that the person has limited driving privileges and of the nature of the restriction and that the person has proof of the employer's notification in the person's possession while operating the employer's vehicle for normal business duties. As under existing law, a motor vehicle owned by a

business that is partly or entirely owned or controlled by a person with limited driving privileges is not, under this provision, a motor vehicle owned by an employer.

(2) If the motor vehicle to be driven under the privileges is registered in a state other than Ohio, instead of installing on that vehicle an immobilizing or disabling device, the person with the limited driving privileges must display on the vehicle a decal, as prescribed by the Registrar, that states that the vehicle is subject to limited driving privileges in Ohio and that describes the restriction. The decal must be displayed on the bottom left corner of the vehicle's back window or, if there is no back window, on the bottom left corner of the vehicle's windshield.

The existing prohibitions related to use of an immobilizing or disabling device and tampering with or circumventing the operation of an immobilizing or disabling device are relocated but retained by the bill, the exemption is clarified, and the provisions in their entirety are expanded to refer to all immobilizing or disabling device. The offense continues to be a first degree misdemeanor. (R.C. 4510.44.)

Driving under suspension other than under the Financial Responsibility Law, or in violation of a license restriction

Existing law

Under existing law, no person, whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended or revoked under any provision of the Revised Code other than the law governing financial responsibility, or under any applicable law in any other jurisdiction in which the person's license or permit was issued, may operate any motor vehicle upon the highways or streets within this state during the period of the suspension or within one year after the date of the revocation. No person who is granted occupational driving privileges by any court may operate any motor vehicle upon the highways or streets in this state except in accordance with the terms of the privileges. (R.C. 4507.02(D)(1).) A violation of either prohibition is the offense of "driving under suspension or revocation or in violation of license restrictions," and is a first degree misdemeanor under existing law, and the court also may impose an additional suspension of the person's license, permit, or privilege for up to one year driving under suspension (R.C. 4507.99(A)).

Existing law also prohibits a person from operating a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular traffic or parking in Ohio in violation of any restriction of the person's driver's or commercial driver's license or permit related to the person's driving ability. Driving in violation of restrictions also is the offense of "driving under

suspension or revocation or in violation of license restrictions," a misdemeanor of the first degree. The court may suspend the person's driver's or commercial driver's license or permit or nonresident operating privilege for a period not to exceed one year. (R.C. 4507.02(B)(2) and 4507.99(A).)

Operation of the bill

The bill relocates the prohibition against driving under suspension imposed other than under the Financial Responsibility Law and the prohibition against driving in violation of a license restriction, and the penalty for a violation of either prohibition. It also removes the first prohibition's restriction against operating a motor vehicle within one year after the date of a revocation, because licenses are no longer revoked under the bill. Under the bill, there is no specific prohibition against a person who is granted occupational driving privileges by any court operating a motor vehicle upon the highways or streets in this state except in accordance with the terms of the privileges; rather, the bill rewords the "driving under suspension" prohibition so that it prohibits a person whose license, permit, or privilege has been suspended under any provision of the Revised Code other than the Financial Responsibility Law from operating a motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within this state during the period of suspension *unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges*. (R.C. 4510.11(A) and (B).)

The bill names the relocated and consolidated offense "driving under suspension or in violation of a license restriction." Under the bill, driving under suspension or in violation of a license restriction continues to be a first degree misdemeanor. The bill requires a court to impose for the offense a Class 7 (definite period not to exceed one year) suspension of the person's license, permit, or privilege. (R.C. 4510.11(C)(1).)

Existing law does not require the immobilization of a vehicle involved in the "driving under suspension or driving in violation of license restrictions" offense. But under the bill, in addition to any other penalty imposed on the offender, the court is required to order the immobilization of the vehicle involved in the offense (if the vehicle is registered in the offender's name) and to order the impoundment of the vehicle's license plates, as follows (R.C. 4510.11(C)(2), (3), and (4)):

(1) Except as described in (2) or (3) below, both the immobilization and impoundment are for 30 days.

(2) If the offender previously has been convicted of or pleaded guilty to one violation of this offense or one violation of a substantially similar municipal ordinance, both the immobilization and impoundment are for 60 days.

(3) If the offender previously has been convicted of or pleaded guilty to two or more such violations, the vehicle involved in the offense is forfeited to the state.

Any order for immobilization and impoundment must be issued and enforced under established immobilization procedures, as modified by the bill (see "***Vehicle impoundment, immobilization, and forfeiture procedures***," below). The court may not release a vehicle from immobilization unless the court is presented with current proof of financial responsibility with respect to that vehicle. (R.C. 4510.11(D).)

Any order of criminal forfeiture under this provision must be issued and enforced under established forfeiture procedures, as modified by the bill (see "***Vehicle impoundment, immobilization, and forfeiture procedures***," below). Upon receipt of the copy of the order from the court, neither the Registrar nor a deputy registrar may accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial is five years after the date of the order, unless, during that period, the court having jurisdiction of the offense that led to the order terminates the forfeiture and notifies the Registrar of the termination. The Registrar then must take necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle. (R.C. 4510.11(E).)

Probationary license or temporary instruction permit suspension for juveniles

Existing law

Existing law requires the Registrar to impose the following suspensions of the probationary driver's license, restricted license, or temporary instruction permit of any person who has been convicted of, pleaded guilty to, or been adjudicated in juvenile court of having committed, prior to the person's 18th birthday, certain violations of law. The suspensions are as follows: (1) a one-year suspension, for three separate violations of specified traffic laws or similar ordinances, (2) a six-month suspension for one state or municipal OMVI or OMVUAC violation, and (3) a 90-day suspension for two separate violations of the specified traffic laws or similar ordinances.

Also under existing law, if the person is at least 16 years of age when he or she pleads guilty to or is convicted of the offense, but does not have a current,

valid probationary driver's or restricted license, the Registrar must deny the issuance to the person of a probationary driver's license, restricted license, driver's license, commercial license, or temporary instruction permit. The issuance denial is for a period of six months beginning on the date the court imposes sentence. If the person is under 16 years of age when the court imposes sentence, the period of denial begins on the date the person becomes 16. (R.C. 4507.162(A).)

Existing law also requires the Registrar to suspend until the person reaches 18 (or, at the discretion of the court, attends and satisfactorily completes a drug abuse or alcohol abuse education, intervention, or treatment program specified by the court) the temporary instruction permit or probationary driver's license of any person under 18 who has been adjudicated an unruly child, a delinquent child, or a juvenile traffic offender for having committed any act that if committed by an adult would be a drug abuse offense or for an alcohol-related disorderly conduct offense. (R.C. 4507.162(B).)

Existing law permits a court, in specified circumstances, to grant occupational driving privileges to a person under 18 whose license has been suspended for a third conviction or adjudication if the person will turn 18 before the expiration of the suspension (R.C. 4507.162(C)).

Operation of the bill

The bill retains the existing license suspension provisions, relocates them to new R.C. 4510.31, classifies the suspensions, modifies them regarding grants of limited driving privileges during a suspension imposed under them, and makes other conforming changes (R.C. 4510.31, which is relocated R.C. 4507.162).

Classification of initial suspensions. The bill provides that the suspension for three separate violations of the specified provisions prior to the person's 18th birthday is a Class C (one year) suspension, the suspension for a state or municipal OVI or OVUAC violation prior to the person's 18th birthday is a Class D (six months) suspension, and the suspension for two separate violations of the specified provisions prior to the person's 18th birthday is a Class E (three months) suspension. It provides that the suspension for a drug abuse offense or an alcohol-related disorderly conduct offense is a Class D (six month) suspension, subject to earlier termination by the Registrar upon the person's completion of a drug or alcohol treatment program. (R.C. 4510.31(A) and (B).)

Limited driving privileges for juveniles. The bill provides that, in general, if a person's license is suspended for three separate violations of the specified provisions prior to the person's 18th birthday *or for two separate violations of the specified provisions prior to the person's 18th birthday*, the court in which the second or third conviction or determination is proved, upon petition of the person,

may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed, if the court finds reasonable cause to believe that the suspension will seriously affect the person's ability to continue in employment, educational training, vocational training, or treatment (note that the privileges may be granted for use before the person's 18th birthday). In granting the privileges, the court must specify the purposes, times, and places of the privileges and may impose any other conditions upon the persons' driving of a motor vehicle that the court considers reasonable and necessary. Courts are prohibited from granting limited driving privileges to a person under this provision if the person, within the six preceding years, has been convicted of, pleaded guilty to, or adjudicated in juvenile court of having committed three or more specified offenses (see "***Limited driving privileges***," above).

The bill retains the existing provisions regarding the court's retention of the person's license during the period of the suspension and the period of the privileges, the court's delivery of a driving permit card to the person for use during the period of the privileges, and the notification of the Registrar of the grant and details of the privileges.

Generally, in any case in which the temporary instruction permit or probationary driver's license of a person under 18 years of age has been suspended under any of the above-described provisions, or under any other provision of law, the court may grant the person limited driving privileges for the purpose of the person's practicing of driving with the person's parent, guardian, or other custodian during the period of the suspension, as described above under "***Limited driving privileges***." (R.C. 4510.31(C).)

Subsequent suspension. If a person who has been granted limited driving privileges under this provision is convicted of, pleads guilty to, or is adjudicated in juvenile court of having committed, a violation of new R.C. Chapter 4510. or a subsequent violation of any of the specified provisions the conviction or adjudication of which were the basis of the person's suspension during the period of the limited driving privileges, the court that granted the privileges must suspend the person's driving permit card, the court or the clerk must forward the person's license or permit to the Registrar, and the Registrar must impose a Class C (one year) suspension of the person's license or permit (R.C. 4510.31(D)).

Prohibition against issuance of license. As under existing law, the bill prohibits any application for a driver's or commercial driver's license from any person whose probationary license, restricted license, or temporary instruction permit has been suspended under the provisions described above in "***Classification of initial suspensions***" or "***Subsequent suspensions***" until each of the following has occurred: (1) the suspension period has expired, (2) a temporary instruction permit or commercial driver's license temporary instruction permit has

been issued, (3) the person successfully completes a juvenile driver improvement program (see below) approved by the Registrar, and (4) the applicant has submitted to the examination for a driver's license or a commercial driver's license as provided by law (R.C. 4510.31(E)).

Juvenile driver improvement programs. The bill relocates a provision of existing law requiring the Registrar to establish standards for juvenile driver improvement programs and to approve any programs that meet the established standards. The standards and course requirements are retained under the bill. Only those programs approved by the Registrar are acceptable for reinstatement of the driving privileges of a person whose probationary driver's license was suspended. (R.C. 4510.311 and repeal of R.C. 4507.162(F).)

Suspension for causing death while fleeing an officer or failure to comply with an officer's order or signal

Existing law requires a court to suspend the driver's or commercial driver's license of any person who is convicted of or pleads guilty to causing the death of another, as the proximate result of operating a motor vehicle, while eluding or fleeing a police officer. The suspension is for a period of ten years, and the Registrar may not issue to the offender another driver's or commercial driver's license during the effective date of the suspension. Any person who is convicted of or pleads guilty to a second violation of causing the death of another while eluding or fleeing a police officer by motor vehicle has his or her license suspended for life. (R.C. 4507.166.)

Separately, an existing Criminal Law provision establishes the offense of failure to comply with an order or signal of a police officer. The offense generally is a first degree misdemeanor, but, in specified circumstances, it is a felony of the third or fourth degree. A related provision of existing law requires the trial judge to suspend for not less than 30 days or more than three years, or revoke, the driver's or commercial driver's license or permit or nonresident operating privilege or a person convicted of willfully eluding or fleeing a police officer. (R.C. 2921.331 and 4507.16(A)(1)(e).)

The bill repeals the section requiring the suspension of the driver's or commercial driver's license of any person who is convicted of or pleads guilty to causing the death of another, as the proximate result of operating a motor vehicle, while eluding or fleeing a police officer and repeals the provision requiring a suspension for a person convicted of willfully eluding or fleeing a police officer (R.C. 4507.166 and 4507.16(A)(1)(e), repealed). It relocates the suspensions to the Criminal Law section that currently contains the offense of failure to comply with an order or signal of a police officer. Under the bill, the court must impose a Class 2 (definite period of three years to life) suspension for the offense, and no

judge may suspend the first three years of the suspension. If the offender previously has been found guilty of that offense, the court must impose a Class 1 (lifetime) suspension, and no judge may suspend any portion of the suspension. Additionally, the court is specifically prohibited from granting limited driving privileges to an offender whose license is suspended for this violation. (R.C. 2921.331.)

Administrative and judicial suspensions for cigarette tax law violation

Existing law requires the Registrar, in addition to any other penalty imposed upon a person convicted of a violation of R.C. 5743.112 (trafficking in cigarettes with intent to avoid payment of the state's cigarette tax) or 5743.60 (trafficking in tobacco products with intent to avoid the state's tobacco tax) who was the operator of a motor vehicle used in the violation, to suspend the offender's driver's or commercial driver's license pursuant to the order and determination of the trial judge of any court of record under R.C. 4507.16, as discussed above in "***General judicial suspensions***" (R.C. 5743.99(F).). As discussed in that portion of the analysis, existing law also requires a judge who sentences a person for trafficking in cigarettes with intent to avoid payment of the cigarette tax to suspend for not less than 30 days and not more than three years, or revoke, the license, permit, or privilege of the offender (R.C. 4507.16(A)(1)(f)).

The bill retains the provision requiring the Registrar to impose the suspension and specifies that the suspension is to be for not less than 30 days or more than three years (R.C. 5743.99(F)). As discussed above in "***General judicial suspensions***," the bill also relocates to R.C. 5743.99 the related existing judicial suspension of that duration that a sentencing court is required to impose upon a person convicted of a violation of R.C. 5743.112; the bill also extends the judicial suspension to violations of R.C. 5743.60. The bill also retains the existing provision, from the repealed R.C. 4507.16(I), that specifies that no judge may suspend the first 30 days of the suspension. (R.C. 5743.99(F) and repeal of R.C. 4507.16(A)(1)(f).)

Affirmative defenses

Existing law provides the following affirmative defenses regarding prohibitions against operating a motor vehicle in violation of a suspension order (R.C. 4507.02(E) and 4511.192):

(1) It establishes an affirmative defense to any prosecution brought for a violation of a prohibition against driving under a suspension imposed under the Vehicle Implied Consent Law, under R.C. 4511.196, for a state or municipal OMVI conviction, under the Financial Responsibility Law, or under any other provision that the alleged offender drove under suspension or in violation of a

restriction because of a substantial emergency, provided that no other person was reasonably available to drive in response to the emergency.

(2) It establishes an additional, specific affirmative defense for a violation of a prohibition against driving under a suspension under the Financial Responsibility Law that the order of suspension resulted from the failure of the alleged offender to respond to a financial responsibility random verification request and that, upon a showing of proof of financial responsibility, the alleged offender was in compliance with the financial responsibility requirements at the time of the initial financial responsibility random verification request.

The bill combines, relocates, and slightly expands the affirmative defense described above in (1). Under the bill, it is an affirmative defense to any prosecution brought under R.C. 4510.11, 4510.14, 4510.16, or 4510.21 (the existing prohibitions, as relocated by the bill, that prohibit driving under a suspension imposed under the Vehicle Implied Consent Law, under R.C. 4511.196, for a state or municipal OVI conviction, under the Financial Responsibility Law, or under any other provision) or under a substantially equivalent municipal ordinance that the alleged offender drove under suspension, without a valid permit or driver's or commercial driver's license, or in violation of a restriction because of a substantial emergency, and because no other person was reasonably available to drive in response to the emergency. The bill relocates, with a clarifying change, the affirmative defense describe above in (2) that is specific to a violation of a prohibition against driving under a financial responsibility suspension arising from a failure to respond to a random verification request. (R.C. 4510.04 and repeal of R.C. 4511.192(B) and 4507.02(E).)

Suspension for violation of a substantially similar municipal ordinance

Existing law

Existing law generally authorizes a court to suspend or revoke an offender's driver's or commercial driver's license or permit for the period of time the court determines appropriate, whenever an offender is convicted of or pleads guilty to a violation of a municipal ordinance that is substantially similar to a provision of state law and the court is permitted or required to suspend or revoke a person's driver's or commercial driver's license or permit by state law. The suspension or revocation is in addition to any other penalties the court is authorized by law to impose upon the offender, but in no case may the court impose a suspension for the violation of the municipal ordinance in excess of the period of suspension that is permitted or required to be imposed for the violation of state law. (R.C. 4507.1611.)

Existing law also requires the court imposing a sentence upon an offender for any violation of a municipal ordinance substantially equivalent to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter to impose a suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for a period that is equivalent in length to the suspension required for the equivalent state offense under similar circumstances (R.C. 4507.1613).

Existing law also requires a court that sentences a person who is convicted of or pleads guilty to a municipal OMVI ordinance or a municipal OMVUAC ordinance to suspend the person's driver's or commercial driver's license for a specified period of time that is the same as the period applicable for convictions of state OMVI or state OMVUAC (R.C. 4507.16(B) and (E); see "***State OMVI--state OVI***," and "***State OMVUAV--state OVUAC***," below).

Operation of the bill

The bill relocates the existing 4507.1611 provision, eliminates the references to "revocation" (see "***Terminology***,"), and adds authority for a court to suspend nonresident operating privileges (R.C. 4510.05, relocating R.C. 4507.1611). The bill also relocates the R.C. 4507.1613 provision, expands it so that it also applies regarding municipal ordinance violations that are substantially equivalent to the offense under state law of "soliciting another to engage in sexual activity for hire" and to violations of municipal OVI ordinances (see "***Definition of "municipal OVI ordinance" for purposes of state OVI, etc.***," below), and specifies that the suspension imposed for the municipal ordinance violation is to be from the range specified in the bill under R.C. 4510.02 for judicial suspensions imposed for the comparable offense under state law (R.C. 4510.07, relocating R.C. 4507.1613, and 4510.01(F); repeal of R.C. 4507.16(B) and (E)).

Examination of licensee's competency

Existing law requires the Registrar to require a person to submit to a driver's license examination or a physical examination, or both, or a commercial driver's license examination under either of the following circumstances: (1) upon determination that the person has more than seven points charged against him or her and is not eligible to retain the license or have it returned, or (2) having good cause to believe that the holder of a driver's or commercial driver's license is incompetent or otherwise not qualified to be licensed. The Registrar must provide written notice of at least five days sent to the licensee's last known address. Upon the conclusion of the examination, the Registrar may suspend or revoke the license of the person, may permit the person to retain the license, or may issue the person a restricted license. A refusal or neglect of the licensee to submit to the examination is ground for suspension or revocation of his license. (R.C. 4507.20.)

The bill eliminates the Registrar's authority to require the examination upon the person having seven points charged against him or her and requires the Registrar to provide the written notice at least 30 days before the examination, rather than five. The bill also eliminates the authority of the Registrar to revoke the person's license (see "***Terminology***"). (R.C. 4507.20.)

Temporary instruction permits

Restrictions on issuance

Under existing law, no temporary instruction permit or driver's license may be issued to any person whose license has been suspended during the period for which the license was suspended. Also, no permit or license may be issued to any person whose license has been revoked under any provision of the Driver's License Law (R.C. 4507.01 to 4507.39) until the expiration of one year after the license was revoked. In addition to changing "revoked" to "canceled" (see "***Terminology--suspensions, cancellations, revocations, etc.***"), the bill eliminates the restriction on permit or license issuance "until the expiration of one year after the license was revoked." The bill also eliminates a separate restriction against any temporary instruction permit or driver's license being issued to or retained by any person whose driver's or commercial driver's license has been permanently revoked pursuant to "division (C) of section 4507.16" (the reference in existing law to a license or permit that has been permanently revoked pursuant to division (C) of R.C. 4507.16 is incorrect in existing law because division (C) of R.C. 4507.16 does not authorize permanent revocations). (R.C. 4507.08.)

Terminology--suspensions, cancellations, revocations, etc.

Existing law defines "suspension" or "revocation," when applied to a driver's license, as the withdrawal from a resident, temporary resident, or nonresident of the privilege to operate a motor vehicle upon a street or highway in this state. It further specifies that the withdrawal of the privilege from a person causes the person to be ineligible for the privilege during the entire period of the suspension or revocation and including any period during which the resident, temporary resident, or nonresident either has not paid any applicable driver's license reinstatement fee or has not complied with any other requirement governing license reinstatement. (R.C. 4507.012.) The bill repeals these provisions (R.C. 4507.012, repealed).

For purposes of the Motor Vehicles Law (Title 45) and the Criminal Code (Title 29), the bill standardizes the terms used to take punitive or administrative action against a person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. The bill defines "cancel" or "cancellation" as the annulment or termination by the

BMV of a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege because it was obtained unlawfully, issued in error, altered, or willfully destroyed, or because the holder no longer is entitled to the license, permit, or privilege. The bill defines "suspend" or "suspension" as the permanent or temporary withdrawal, by action of a court or the BMV, of a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for the period of the suspension or the permanent or temporary withdrawal of the privilege to obtain a license, permit, or privilege of that type for the period of the suspension. (R.C. 4510.01(A) and (H).)

Throughout the bill, other references to actions that may be taken against a driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege are removed and generally replaced with either "cancel" or "suspend," as appropriate. Terms that are removed include "revoke" or "revocation," "deny" or "denial," "disqualify" or "disqualification," and "forfeit" or "forfeiture." The bill modifies the following Revised Code sections to conform the terminology used to describe an action taken against a license, permit, or privilege; the sections may have other technical and substantive changes, as well (the substantive changes are described in other parts of this analysis): R.C. 119.062, 1905.201, 2151.354, 2919.22(E)(5)(d) and (G)(1), 2923.01(L)(2)(a), 2935.27(D), 2937.221(A), 2951.02(G), 3123.59, 3123.613(B), 3327.10, 3937.31, 4501.022, 4503.39, 4506.10(D), 4506.16, 4506.17(M), 4507.023, 4507.06, 4507.08, 4507.081, 4507.16, 4507.164, 4507.17, 4507.19, 4507.20, 4507.21, 4507.30, 4507.45, 4507.50, 4509.33, 4509.34, 4509.81, 4510.22(A), 4510.52, and 4511.191(F).

The bill also standardizes in numerous places references to drivers' licenses. It uses the phrase "driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege" whenever the application of the particular provision of law is intended to be comprehensive.

Miscellaneous suspension provisions

Disposition of license

Under existing law, any person whose driver's or commercial driver's license has been suspended or revoked under the general judicial suspension provisions (R.C. 4507.16) and who desires to retain the license during the pendency of an appeal, at the time sentence is pronounced, must notify the court that suspended or revoked the license of his intention to appeal. The court, mayor, or clerk of the court must retain the license until the appeal is perfected, and, if execution of sentence is stayed, the license is returned to the accused to be held by him during the pendency of the appeal. If the appeal is not perfected or is

dismissed or terminated in an affirmance of the conviction, then the license is taken up by the court, mayor, or clerk, at the time of putting sentence into execution, and the court proceeds in the same manner as if no appeal was taken. (R.C. 4507.18.) The bill repeals this provision (R.C. 4507.18, repealed), but retains and relocates its substance as it applies to state OMVI and state OMVUAC (see "***Taking of chemical tests, use of tests, etc.***," below).

Child support enforcement

Existing law requires a court or child support enforcement agency to notify the Registrar when a person who holds a driver's or commercial driver's license, motorcycle operator's license or endorsement, temporary instruction permit, or commercial driver's temporary instruction permit is in default under a child support order. The individual generally must be notified of the actions the Registrar and deputy registrars will take. The Registrar and all deputy registrars are prohibited from issuing to, or renewing for, the individual any such license, endorsement, or temporary instruction permit, are required to suspend any license, permit, or endorsement the individual holds, and are explicitly required in the Motor Vehicle Law to comply with these support provisions. (R.C. 3123.55, 3123.58, 3123.59, 3123.613, and 4507.111.)

The bill requires the Registrar to impose a Class F (until conditions are met) suspension in such a situation (see Appendix). It also conforms the existing language in the Motor Vehicle Law to the support provisions. (R.C. 3123.55, 3123.58, 3123.59, 3123.613, 3123.614, and 4507.111.)

State OMVI--state OVI

Existing law--offense of state OMVI

Existing 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 one per cent 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 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 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 the person's blood, (6) the person has a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (7) the person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine. For the remainder of this part of the analysis, a violation of

any of the portions of the prohibition described in clauses (1) to (4), above, is referred to as "traditional OMVI" and a violation of any of the portions of the prohibition described in clauses (5) to (7), above, is referred to as "high-amount OMVI."

Existing law--penalties for state OMVI

Existing R.C. 4511.99(A) sets forth the sanctions for a conviction of state OMVI. The sanctions vary, depending upon the number of times within the preceding six years that the offender has been convicted of any of a list of specified *alcohol-related and vehicle-related offenses*. The relevant alcohol-related and vehicle-related offenses are: state OMVI or state OMVUAC (see below); any municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or both or relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine (hereafter, collectively referred to as "municipal OMVI"; note that activities prohibited by state OMVUAC, as well as those prohibited by state OMVI, might be included within municipal OMVI); involuntary manslaughter in a case in which the offender was subject to the sanctions described in R.C. 2903.04(D); aggravated vehicular homicide or aggravated vehicular assault based on driving drunk or a substantially similar municipal ordinance; aggravated vehicular homicide based on recklessness, vehicular homicide, vehicular manslaughter, vehicular assault, a violation of former R.C. 2903.07, 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; or 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. The existing sanctions for state OMVI are as follows (R.C. 4507.16(B) and (F) and 4511.99(A)):

(1) ***Generally***. Except as described in (2), (3), or (4), below, for traditional OMVI, the offense is a misdemeanor of the first degree, and the court must sentence the offender to a term of imprisonment of three consecutive days and may sentence the offender under the Misdemeanor Sentencing Law to a longer term of imprisonment. Except as described in (2), (3), or (4), below, for high-amount OMVI, the offense is a misdemeanor of the first degree, and the court must sentence the offender to a term of imprisonment of at least three consecutive days and to a requirement that the offender attend, for three consecutive days, a drivers' intervention program (a DIP). If the court determines that the offender is not conducive to treatment in the DIP, if the offender refuses to attend the DIP, or if the place of imprisonment can provide a DIP, the court must sentence the offender to a term of imprisonment of at least six consecutive days. In all cases, in addition, the court must fine the offender not less than $250 and not more than

$1,000. For traditional OMVI, the court may suspend the mandatory three consecutive days of imprisonment, if it places the offender on probation and requires the offender to attend, for three consecutive days, a certified DIP and may suspend any part of the mandatory three consecutive days of imprisonment if it places the offender on probation for part of the three consecutive days, requires the offender to attend, for the suspended portion, a certified DIP, and sentences the offender to a term of imprisonment equal to the remainder of the three consecutive days that the offender does not spend at the program. In all cases, the court may require the offender, as a condition of probation and in addition to the required DIP attendance, to attend and complete treatment or education programs that the DIP's operators determine the offender should attend.

Of the fine imposed: (a) $25 is paid to an enforcement and education fund established by the legislative authority of the law enforcement agency primarily responsible for the offender's arrest, to be used for specified OMVI law enforcement and public information purposes, (b) $50 is paid to the political subdivision that pays the cost of housing the offender during the term of incarceration, to be used for incarceration or treatment costs and ignition interlock and house arrest equipment, (c) $25 is deposited into the county or municipal indigent drivers alcohol treatment fund under the control of the sentencing court, and (d) the balance is disbursed as otherwise provided by law. (R.C. 4511.99(A)(1) and (5) and 4511.991.)

(2) ***Second offense in six years***. Except as described in (4), below, if, within six years of the offense, the offender previously has been convicted of one alcohol-related and vehicle-related offense, the offender is punished as described in this part of the analysis. For traditional OMVI, the offense is a misdemeanor of the first degree, and the court generally must sentence the offender to a term of imprisonment of ten consecutive days and may sentence the offender pursuant to the Misdemeanor Sentencing Law to a longer term of imprisonment. As an alternative to the term of imprisonment for traditional OMVI, but subject to the limitation described below, the court may sentence the offender to both a term of imprisonment of five consecutive days and not less than 18 consecutive 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. For high-amount OMVI, the offense is a misdemeanor of the first degree, and the court must sentence the offender to a term of imprisonment of 20 consecutive days and may sentence the offender pursuant to the Misdemeanor Sentencing Law to a longer term of imprisonment. As an alternative to the term of imprisonment for high-amount OMVI, but subject to the limitation described below, the court may sentence the offender to both a term of imprisonment of ten consecutive days and not less than 36 consecutive days of EMHA. The ten

consecutive days of imprisonment and the period of EMHA cannot exceed six months, and the ten consecutive days do not have to be served prior to or consecutively with the period of EMHA.

In all cases, in addition to any other sanctions imposed, the court must fine the offender not less than $350 and not more than $1,500 and may require the offender to attend a certified DIP. If the DIP's officials determine that the offender is alcohol dependent, the court must order the offender to obtain treatment through an authorized alcohol and drug addiction program, to be paid for by the offender. Of the fine imposed: (a) $35 is paid to an enforcement and education fund as described above for a first offense, (b) $115 is paid to the political subdivision that pays the cost of housing the offender during the term of incarceration, to be used for incarceration or treatment costs incurred in housing state or municipal OMVI offenders and to pay for ignition interlock devices and EMHA equipment, (c) $50 is deposited into the county or municipal indigent drivers alcohol treatment fund under the control of the sentencing court, and (d) the balance is disbursed as otherwise provided by law.

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 all cases, 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 (see "***Immobilization and forfeiture of vehicles***," below). (R.C. 4511.99(A)(2) and (6).)

(3) ***Third offense in six years***. Except as described in (4), below, if, within six years of the offense, the offender previously has been convicted of two alcohol-related and vehicle-related offenses, the offender is punished as described in this part of the analysis. For traditional OMVI, the court must sentence the offender to a term of imprisonment of 30 consecutive days and may sentence the offender to a longer definite term of imprisonment of not more than one year. As an alternative to the term of imprisonment for traditional OMVI, but subject to the limitation described below, the court may sentence the offender to both a term of imprisonment of 15 consecutive days and not less than 55 consecutive 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. For high-amount OMVI, the court must sentence the offender to a term of imprisonment of 60 consecutive days and may sentence the offender to a longer definite term of not more than one year. As an alternative to the term of imprisonment for high-amount OMVI, but subject to the limitation described below, the court may sentence the offender to both a term of imprisonment of 30 consecutive days and not less than 110 consecutive

days of EMHA. The 30 consecutive days of imprisonment and the period of EMHA cannot exceed one year, and the 30 consecutive days do not have to be served prior to or consecutively with the period of EMHA.

In all cases, in addition to any other sanctions imposed, the court must fine the offender not less than $550 and not more than $2,500 and must require the offender to attend an authorized alcohol and drug addiction program, generally to be paid for by the offender. Of the fine imposed: (a) $123 is paid to an enforcement and education fund established by the legislative authority of the law enforcement agency primarily responsible for the arrest of the offender, to be used for specified OMVI law enforcement and public information purposes, (b) $277 is paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration, to be used for incarceration or treatment costs incurred in housing state or municipal OMVI offenders and to pay for ignition interlock devices and EMHA equipment, and (c) the balance is disbursed as otherwise provided by law.

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 the "innocent owner" exception, must order the criminal forfeiture to the state of the vehicle the offender was operating at the time of the offense for traditional OMVI, and 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) and (7).)

(4) ***Fourth or subsequent offense in six years or prior felony state OMVI conviction***. If, within six years of the offense, the offender previously has been convicted of three or more alcohol-related and vehicle-related offenses, the offender is punished as described in this part of the analysis. For traditional OMVI, subject to the special "repeat OMVI felon" sentencing provision described below, the offense is a felony of the fourth degree, and, notwithstanding the prison terms generally authorized for fourth degree felonies, the court may sentence the offender to a definite prison term of at least six months and not more than 30 months. The court must sentence the offender in accordance with the Felony Sentencing Law and must impose as part of the sentence either a mandatory term of local incarceration of 60 consecutive days or a mandatory prison term of 60 consecutive days. 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. For traditional OMVI, if the offender previously has been convicted of state OMVI under circumstances in which the offense was a felony, regardless of when the

prior violation and the prior conviction occurred, the offense is a felony of the third degree, the court must sentence the offender in accordance with the Felony Sentencing Law, and the court must impose as part of the sentence a mandatory prison term of 60 consecutive days of imprisonment.

For high-amount OMVI, subject to the special "repeat OMVI felon" sentencing provision described below, the offense is a felony of the fourth degree, and, notwithstanding the prison terms generally authorized for fourth degree felonies, the court may sentence the offender to a definite prison term of at least six months and not more than 30 months. The court must sentence the offender in accordance with the Felony Sentencing Law and must impose as part of the sentence either a mandatory term of local incarceration of 120 consecutive days or a mandatory prison term of 120 consecutive days. If the offender is required to serve a mandatory term of local incarceration of 120 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. For high-amount OMVI, if the offender previously has been convicted of state OMVI under circumstances in which the offense was a felony, regardless of when the prior violation and the prior conviction occurred, the offense is a felony of the third degree, the court must sentence the offender in accordance with the Felony Sentencing Law, and the court must impose as part of the sentence a mandatory prison term of 120 consecutive days of imprisonment.

In all cases, a court that sentences a felony offender to a mandatory term of local incarceration additionally may sentence the offender to one or more community residential sanctions or nonresidential sanctions under the Felony Sentencing Law but cannot sentence the offender to prison. A court that sentences a felony offender to a mandatory prison term may sentence the offender to an additional prison term of a specified amount but cannot sentence the offender to a community residential sanction or nonresidential sanction.

In all cases, in addition to all other sanctions imposed, the court must fine the offender not less than $800 nor more than $10,000 and must require the offender to attend an authorized alcohol and drug addiction program, generally to be paid for by the offender. Of the fine imposed: (a) $210 is paid to an enforcement and education fund established by the legislative authority of the law enforcement agency primarily responsible for the offender's arrest, to be used for specified OMVI law enforcement and public information purposes, (b) $440 must be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration, to be used for incarceration or treatment costs it incurs in housing state or municipal OMVI offenders and to pay for ignition interlock devices and EMHA equipment, and (c) the balance is disbursed as otherwise provided by law.

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 all cases, in addition to all other sanctions and subject to the "innocent owner" exception, must order the criminal forfeiture to the state of the vehicle the offender was operating at the time of the offense. If title to a motor vehicle that is subject to a criminal forfeiture order is assigned or transferred and existing R.C. 4503.234 applies, in addition to or independent of any other sanction, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association. The proceeds from any fine so imposed must be distributed under existing R.C. 4503.234(D)(4). (R.C. 4511.99(A)(4) and (8) and 2929.13 to 2929.17.)

(5) ***Work release***. Except as described below, upon a showing that imprisonment would seriously affect the ability of a convicted state OMVI offender to continue employment, the court may authorize that the offender be granted work release from imprisonment after the offender has served the mandatory three, six, ten, 20, 30, or 60 consecutive days of imprisonment or the mandatory term of local incarceration of 60 or 120 consecutive days. No court may authorize work release during the three, six, ten, 20, 30, or 60 consecutive days of imprisonment or the mandatory term of local incarceration or mandatory prison term of 60 or 120 consecutive days that the court is required to impose. (R.C. 4511.99(A)(9).)

(6) ***Use of treatment***. Notwithstanding any other provision of law, for both traditional OMVI and high-amount OMVI: (a) a court may not suspend the consecutive days of imprisonment required to be imposed on a second- or third-time state OMVI offender, (b) a court may not place a second-, third-, or fourth- or subsequent-time state OMVI offender in any treatment program in lieu of imprisonment until after the offender has served the required consecutive days of imprisonment, mandatory term of local incarceration, or mandatory prison term, (c) a court that sentences a fourth- or subsequent-time state OMVI offender may not impose any sanction other than a mandatory term of local incarceration or mandatory prison term to apply to the offender until after the offender has served the mandatory term of local incarceration or mandatory prison term required to be imposed, (d) a court that imposes a sentence of imprisonment and a period of EMHA on a second- or third-time state OMVI offender cannot suspend any portion of the sentence or place the offender in any treatment program in lieu of imprisonment or EMHA, and (e) except as specifically authorized by the State OMVI Law, a court cannot suspend the three or more consecutive days of imprisonment required for a first-time state OMVI offender or place such an offender in any treatment program in lieu of imprisonment until after the offender has served the three consecutive days of imprisonment. (R.C. 4511.99(A)(10).)

(7) ***EMHA limitations***. For both traditional OMVI and high-amount OMVI, courts are prohibited from using the authorized alternative EMHA sentences for second- and third-time state OMVI offenders unless, within 60 days of the date of sentencing, the court issues a written finding that, due to the unavailability of space at the incarceration facility where the offender would serve the term of imprisonment imposed, the offender will not be able to commence serving the term within the 60-day period following the date of sentencing. If the court issues such a finding, it may impose the authorized alternative EMHA sentence for second-time and third-time state OMVI offenders. (R.C. 4511.99(A)(12).)

(8) ***Driver's license suspensions***. 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, generally must revoke the driver's or commercial driver's license or permit or nonresident operating privilege of any person who is convicted of either traditional state OMVI or high-amount state OMVI or a violation of a substantially equivalent municipal ordinance, or suspend it as follows: (a) except as described in (8)(b), (c), or (d), below, the judge or mayor must suspend the license, permit, or privilege for not less than six months nor more than three years, and no judge may suspend the first six months of the suspension, (b) subject to (8)(d), below, if, within six years of the offense, the offender has been convicted of or pleaded guilty to one alcohol-related and vehicle-related offense, the judge must suspend the license, permit, or privilege for not less than one year nor more than five years, and no judge may suspend the first year of the suspension, (c) subject to (8)(d), below, if, within six years of the offense, the offender has been convicted of two alcohol-related and vehicle-related offenses, the judge must suspend the license, permit, or privilege for not less than one year nor more than ten years, and no judge may suspend the first year of the suspension, and (d) if, within six years of the offense, the offender has been convicted of three or more alcohol-related and vehicle-related offenses, or if the offender previously has been convicted of state OMVI under circumstances in which it was a felony and regardless of when the violation and the conviction or guilty plea occurred, the judge must suspend the license, permit, or privilege for a period of time set by the court but not less than three years, no judge may suspend the first three years of the suspension, and the judge may permanently revoke the license, permit, or privilege. The court may grant the offender occupational driving privileges, after the offender has served a specified period of the suspension imposed (see (a), below). (R.C. 4507.16(B), (F), and (I).)

(9) ***Occupational driving privileges***. Under existing law, if a person's driver's or commercial driver's license or permit or nonresident operating privilege is under an OMVI suspension imposed under the provisions discussed above in (8), the person is not entitled to request, and the judge or mayor may not grant

occupational driving privileges to the person, if the person, within the preceding seven years, has been convicted of or pleaded guilty to three or more alcohol-related and vehicle-related offenses. Any other person whose license or privilege is under an OMVI suspension may file a petition alleging that the suspension would seriously affect the person's ability to continue the person's employment. Upon satisfactory proof that there is reasonable cause to believe that the suspension would seriously affect the person's ability to continue the person's employment, the court may grant the person occupational driving privileges during the period during which the suspension otherwise would be imposed. However, the judge or mayor may not grant occupational driving privileges to any person who, within seven years of the filing of the petition, has been convicted of or pleaded guilty to the specified offenses. The court also may not grant occupational driving privileges for employment as a driver of commercial motor vehicles to any person who is disqualified from operating a commercial motor vehicle under a default child support order or under the Commercial Driver's Licensing Law. (R.C. 4507.16(F).)

Existing law also prohibits the court from granting occupational driving privileges to an offender whose license, permit, or privilege is under an OMVI suspension during any of the following periods of time (R.C. 4507.16(F)(1) to (4)):

(1) The first 15 days of suspension imposed upon the offender, if (2), (3), or (4), below does not apply. On or after the 16th day of suspension, the court may grant the offender occupational driving privileges, but the court may require the offender to exercise the occupational driving privileges only in vehicles equipped with ignition interlock devices.

(2) The first 30 days of suspension imposed upon the offender, if the offender has been convicted of one other alcohol-related and vehicle-related offense within six years of the offense. On or after the 31st day of suspension, the court may grant the offender occupational driving privileges, but the court may require the offender to exercise the occupational driving privileges only in vehicles equipped with ignition interlock devices.

(3) The first 180 days of suspension imposed upon the offender, if the offender has been convicted of two other alcohol-related and vehicle-related offenses within six years of the offense. The judge may grant occupational driving privileges on or after the 181st day of the suspension only if the judge is not prohibited from granting the privileges and only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender, during the period from the 181st day of suspension until the end of the first year of suspension, from operating any motor vehicle unless it is equipped with a certified ignition interlock device. After the first year of the suspension, the court may

authorize the offender to continue exercising the occupational driving privileges in vehicles that are not equipped with ignition interlock devices. If the offender does not petition for occupational driving privileges until after the first year of suspension and if the judge is not prohibited from granting the privileges, the judge may grant the offender occupational driving privileges without requiring the use of a certified ignition interlock device.

(4) The first three years of suspension imposed upon the offender, if the offender has been convicted of three or more other OMVI violations within six years of the offense. The judge may grant occupational driving privileges to an offender who receives such a suspension after the first three years of suspension only if the judge is not prohibited from granting the privileges and only if the judge, at the time of granting the privileges, also issues an order prohibiting the offender from operating any motor vehicle, for the period of suspension following the first three years of suspension, unless the motor vehicle is equipped with a certified ignition interlock device. (R.C. 4507.16(F)(1) to (4).)

(10) ***Imposition of "points***." Under the existing Point System Law, discussed above in "***Repeat traffic offender license suspension (accumulation of points on driving record)***," an offender who is convicted of either traditional state OMVI or high-amount state OMVI has six "points" assessed against the offender's record. Accumulation of a specified number of points can result in a suspension of a person's driver's license. (R.C. 4507.021.)

Operation of the bill--in general

The bill expands the elements of state OMVI (renamed state OVI) and relocates and makes a few modifications in the penalties for those offenses.

Operation of the bill--offense of state OMVI (renamed state OVI--see below)

The bill adds two additional prohibitions to the offense of state OMVI (renamed state OVI--see below) that will apply in addition to the existing four prohibitions constituting the offense. The additional prohibitions prohibit a person from doing either of the following: (1) operating a vehicle, streetcar, or trackless trolley within Ohio if the person has a concentration of .12 of one per cent or more but less than .204 of one per cent by weight per unit volume of alcohol *in the person's blood serum or plasma*, or (2) operating a vehicle, streetcar, or trackless trolley within Ohio if the person has a concentration of .204 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*. Related to these changes, it modifies the existing prohibitions against a person operating a vehicle within Ohio while having a specified concentration of alcohol in his or her blood to specify that the prohibitions pertain *only to whole blood* and

are to be determined *per unit volume*. For all seven existing prohibitions and the additional prohibitions it adds, the bill specifies that the determination of being "under the influence" or of having a "prohibited concentration of alcohol" is determined at the time of the person's operation of the vehicle, streetcar, or trackless trolley. The bill defines the term "operate," for purposes of R.C. Chapter 4511., including state OVI, as "to cause or have caused movement of a vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking" (see "***New offense--"having physical control of a vehicle while under the influence"***," below). (R.C. 4511.01(HHH) and 4511.19(A).)

Operation of the bill--penalties for state OMVI (renamed state OVI)

The bill relocates the general penalty provisions that apply to a violation of R.C. 4511.19(A), currently referred to as state OMVI, from R.C. 4511.99(A) and 4507.16(B) to R.C. 4511.19 and makes certain changes in those penalties. The bill names a violation of R.C. 4511.19 the offense of "operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them" (state OVI) and requires a court sentencing a person for the offense to sentence the offender under the Criminal Sentencing Law contained in R.C. Chapter 2929., except as otherwise authorized or required as described below. (R.C. 4511.19(G)(1) and repeal of R.C. 4507.16(B), 4511.99(A), and 4511.991.) As used in the following discussion of the penalties for state OVI under the bill, "traditional OVI" means the state OVI violations referred to above in "***Existing law--penalties for state OMVI***" as "traditional OMVI" *plus* any violation of the new state OVI prohibition enacted in the bill that is described above in clause (1) of "***Operation of the bill--offense of state OMVI, etc.***", and "high-amount OVI" means the state OVI violations referred to above in "***Existing law--penalties for state OMVI***" as "high-amount OMVI" *plus* any violation of the new state OVI prohibition enacted in the bill that is described above in clause (2) of "***Operation of the bill--offense of state OMVI, etc.***" Under the bill, the penalties for state OVI are as follows:

(1) ***Generally***. Except as otherwise described below in (2), (3), (4), or (5), state OVI is a misdemeanor of the first degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(a) and (G)(4), 4510.02(A)(5), 4510.13, and 4511.181):

(a) If the sentence is being imposed for traditional OVI, a mandatory jail term of three consecutive days, which means 72 consecutive hours. The court may sentence an offender to both a DIP and a jail term; the court may impose a jail term in addition to the three-day mandatory jail term or the DIP intervention program; and in no case may the cumulative jail term imposed for the offense exceed six months. The court may suspend the execution of the three-day jail term if, in lieu of that suspended term, it places the offender on probation and

requires the offender to attend, for three consecutive days, a certified DIP. The court also may suspend the execution of any part of the three-day jail term if it places the offender on probation for part of the three days, requires the offender to attend for the suspended part of the term a certified DIP, and sentences the offender to a jail term equal to the remainder of the three consecutive days that the offender does not spend attending the DIP. The court may require the offender, as a condition of probation and in addition to the required attendance at a DIP, to attend and satisfactorily complete any authorized treatment or education programs that the operators of the DIP determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose on the offender any other conditions of probation that it considers necessary.

(b) If the sentence is being imposed for high-amount OVI, except as otherwise described in this paragraph, a mandatory jail term of at least three consecutive days and a requirement that the offender attend, for three consecutive days, a certified DIP (three consecutive days means 72 consecutive hours). If the court determines that the offender is not conducive to treatment in a DIP, if the offender refuses to attend a DIP, or if the jail at which the offender is to serve the jail term imposed can provide a DIP, the court must sentence the offender to a mandatory jail term of at least six consecutive days. The court may require the offender, as a condition of probation, to attend and satisfactorily complete any authorized treatment or education programs, in addition to the required attendance at a DIP, that the operators of the DIP determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose any other conditions of probation on the offender that it considers necessary.

(c) In all cases, a fine of not less than $250 and not more than $1,000;

(d) In all cases, a Class 5 (definite period of six months to three years) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. No judge may suspend the first six months of the suspension. The court may grant limited driving privileges relative to the suspension, as discussed above under "***Limited driving privileges***," provided that it must require the offender to display on the vehicle that is driven subject to the privileges restricted license plates, subject to exceptions regarding certain employer-owned or out-of-state vehicles.

(2) ***Second offense in six years***. Except as otherwise described below in (3), (4), or (5), if the offender, within six years of the offense, has been convicted of one state OVI or state OVUAC violation or one other "equivalent offense" (see "***Definition of equivalent offense . . .***," below), state OVI is a misdemeanor of the

first degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(b) and (G)(4), 4510.02(A)(4), 4510.13, and 4511.181):

(a) If the sentence is being imposed for traditional OVI, a mandatory jail term of ten consecutive days. The court must impose the ten-day mandatory jail term unless, subject to the limitation described below in "***Use of EMHA***," it instead imposes a sentence consisting of both a jail term and a term of EMHA. The court may impose a jail term in addition to the ten-day mandatory jail term. The cumulative jail term imposed for the offense cannot exceed six months. In addition to the jail term or the term of EMHA and jail term, the court may require the offender to attend a certified DIP. If the DIP's operator determines that the offender is alcohol dependent, it must notify the court, and the court generally must order the offender to obtain treatment through an alcohol and drug addiction program.

(b) If the sentence is being imposed for high-amount OVI, except as otherwise described below, a mandatory jail term of 20 consecutive days. The court must impose the 20-day mandatory jail term, unless, subject to the limitation described below in "***Use of EMHA***," it instead imposes a sentence consisting of both a jail term and a term of EMHA. The court may impose a jail term in addition to the 20-day mandatory jail term. The cumulative jail term imposed for the offense cannot exceed six months. In addition to the jail term or the term of EMHA and jail term, the court may require the offender to attend a certified DIP. If the DIP's operator determines that the offender is alcohol dependent, it must notify the court, and the court generally must order the offender to obtain treatment through an alcohol and drug addiction program.

(c) In all cases, notwithstanding the fines set forth in the Criminal Sentencing Law, a fine of not less than $350 and not more than $1,500.

(d) In all cases, a Class 4 (definite period of one to five years) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. No judge may suspend the first one year of the suspension. The court may grant limited driving privileges, as discussed above under "***Limited driving privileges***," provided that it must require the offender to display on the vehicle that is driven subject to the privileges restricted license plates, subject to exceptions regarding certain employer-owned or out-of-state vehicles.

(e) In all cases, if the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for 90 days in accordance with R.C. 4503.233 and impoundment of the vehicle's license plates for 90 days, as discussed below in "***Vehicle impoundment, immobilization, and forfeiture procedures***."

(3) ***Third offense in six years***. Except as otherwise described below in (4) or (5), if the offender, within six years of the offense, previously has been convicted of two state OVI or OVUAC violations or other "equivalent offenses" (see below), state OVI is a misdemeanor, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(c), (G)(4), and (G)(6), 4510.02(A)(3), 4510.13, and 4511.181):

(a) If the sentence is being imposed for traditional OVI, a mandatory jail term of 30 consecutive days. The court must impose the 30-day mandatory jail term unless, subject to the limitation described below in "***Use of EMHA***," it instead imposes a sentence consisting of both a jail term and a term of EMHA. The court may impose a jail term in addition to the 30-day mandatory jail term. Notwithstanding the terms of imprisonment set forth in the Criminal Sentencing Law, the additional jail term cannot exceed one year, and the cumulative jail term imposed for the offense cannot exceed one year.

(b) If the sentence is being imposed for high-amount OVI, a mandatory jail term of 60 consecutive days. The court must impose the 60-day mandatory jail term unless, subject to the limitation described below in "***Use of EMHA***," it instead imposes a sentence consisting of both a jail term and a term of EMHA. The court may impose a jail term in addition to the 60-day mandatory jail term. Notwithstanding the terms of imprisonment set forth in the Criminal Sentencing Law, the additional jail term cannot exceed one year, and the cumulative jail term imposed for the offense cannot exceed one year.

(c) In all cases, notwithstanding the fines set forth in the Criminal Sentencing Law, a fine of not less than $550 and not more than $2,500.

(d) In all cases, a Class 3 (definite period of two to ten years) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. No judge may suspend the first one year of the suspension. The court may grant limited driving privileges, as discussed above under "***Limited driving privileges***," provided that it must require that the offender display on the vehicle that is driven subject to the privileges restricted license plates, subject to exceptions for certain employer-owned or out-of-state vehicles.

(e) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense, as discussed below in "***Vehicle impoundment, immobilization, and forfeiture procedures***." If title to a motor vehicle that is subject to a forfeiture order is assigned or transferred and R.C. 4503.234(B)(2) or (3) applies, in addition to or independent of any fine established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association; the proceeds of any fine so imposed must be distributed under R.C. 4503.234(C)(2).

(f) In all cases, participation in an alcohol and drug addiction program authorized by R.C. 3793.02, subject to a specified limitation relating to the program's compliance with minimum standards.

(4) ***Fourth or subsequent offense in six years***. Except as otherwise described below in (5), if the offender, within six years of the offense, previously has been convicted of three or more state OVI or OVUAC violations or other "equivalent offenses" (see below), state OVI is a felony of the fourth degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(d), (G)(4), and (G)(6); R.C. 2929.01(Y), (II), and (JJ), 2929.13(A) and (G)(1) and (2), 2929.14(A) and (D)(4), 2929.15(A)(1), 2929.16(A), 2929.17, 2929.18(B)(3), 2929.19(C), 4510.02(A)(2), 4510.13, and 4511.181(B) and (C)):

(a) If the sentence is being imposed for traditional OVI, in the discretion of the court, either a mandatory term of local incarceration of 60 consecutive days or a mandatory prison term of 60 consecutive days. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 60-day mandatory term, the cumulative total of the mandatory term and the jail term for the offense cannot exceed one year, and the court cannot reduce the mandatory 60-day term under any provision of law, cannot impose a prison term, and cannot require the mandatory 60-day term to be served in a prison. It must specify the type of local facility in which the offender is to serve the term (e.g., jail, halfway house, etc.), and the offender must serve the term in the specified type of facility. If the court imposes a mandatory prison term, notwithstanding the general prison terms for a felony of the fourth degree, it also may sentence the offender to a definite prison term of not less than six months and not more than 30 months, and no term of local incarceration, community residential sanction, or nonresidential sanction is authorized for the offense.

(b) If the sentence is being imposed for high-amount OVI, in the discretion of the court, either a mandatory term of local incarceration of 120 consecutive days or a mandatory prison term of 120 consecutive days. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the 120-day mandatory term, the cumulative total of the mandatory term and the jail term for the offense cannot exceed one year, and no prison term is authorized for the offense. If the court imposes a mandatory prison term, notwithstanding the general prison terms for a felony of the fourth degree, it also may sentence the offender to a definite prison term of not less than six months and not more than 30 months, and no term of local incarceration, community residential sanction, or nonresidential sanction is authorized for the offense.

(c) In all cases, notwithstanding the Felony Sentencing Law financial sanction provisions, a fine of not less than $800 nor more than $10,000;

(d) In all cases, a Class 2 (definite period of three years to life) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. No judge may suspend the first three years of the suspension. The court may grant limited driving privileges, as discussed above under "***Limited driving privileges***," provided that it must require that the offender display on the vehicle that is driven subject to the privileges restricted license plates, subject to exceptions for certain employer-owned or out-of-state vehicles.

(e) In all cases, criminal forfeiture of the vehicle involved in the offense, as discussed below in "***Vehicle impoundment, immobilization, and forfeiture procedures***," if the vehicle is registered in the offender's name. If title to a motor vehicle that is subject to a forfeiture order is assigned or transferred and R.C. 4503.234(B)(2) or (3) applies, in addition to or independent of any fine established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association; the proceeds of any fine so imposed must be distributed under R.C. 4503.234(C)(2).

(f) In all cases, participation in an alcohol and drug addiction program, subject to a specified limitation relating to the program's compliance with minimum standards.

(g) In all cases, if the court sentences the offender to a mandatory term of local incarceration, in addition to the mandatory term, the court may impose a term of EMHA under the Felony Sentencing Law, provided that the term cannot commence until after the offender has served the mandatory term of local incarceration.

(5) ***Prior felony state OVI conviction***. If the offender previously has been convicted of a state OVI violation that was a felony, regardless of when the violation and the conviction occurred, state OVI is a felony of the third degree, and the court must sentence the offender to all of the following (R.C. 4511.19(G)(1)(e), (G)(4), and (G)(6); R.C. 4510.02(A)(2), 2929.01(Y) and (QQ), 2929.13(A) and (G)(2), 2929.14(A) and (D)(4), 2929.15(A)(1), 2929.18(B)(3), 2929.19(C), 4510.02(A)(2), 4510.13, and 4511.181(B) and (C)):

(a) If the offender is being sentenced for traditional OVI, a mandatory prison term of 60 consecutive days. The court may impose a prison term in addition to the 60-day mandatory prison term. The cumulative total of the mandatory prison term and the additional prison term for the offense cannot exceed five years. In no case can an offender who is being sentenced for a third degree felony state OVI offense be sentenced to a mandatory term of local incarceration or to a community residential sanction or nonresidential sanction. The court cannot reduce the mandatory 60-day term under any provision of law. The Department of Rehabilitation and Correction (DRC) may place the offender in

an intensive program prison, in accordance with existing law governing those prisons.

(b) If the sentence is being imposed for high-amount OVI, a mandatory prison term of 120 consecutive days. The court may impose a prison term in addition to the 120-day mandatory prison term. The cumulative total of the mandatory prison term and the additional prison term for the offense cannot exceed five years. No term of local incarceration, community residential sanction, or nonresidential sanction is authorized for the offense. As described in paragraph (a), the court cannot reduce the mandatory term, and DRC may place the offender in an intensive program prison.

(c) In all cases, notwithstanding the Felony Sentencing Law financial sanction provisions, a fine of not less than $800 nor more than $10,000;

(d) In all cases, a Class 2 (definite period of three years to life) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. The court may grant limited driving privileges as discussed above under "***Limited driving privileges***," provided that it must require that the offender display on the vehicle that is driven subject to the privileges restricted license plates, subject to exceptions for certain employer-owned or out-of-state vehicles.

(e) In all cases, criminal forfeiture of the vehicle involved in the offense, as discussed below in "***Vehicle impoundment, immobilization, and forfeiture procedures***," if the vehicle is registered in the offender's name. If title to a motor vehicle that is subject to a forfeiture order is assigned or transferred and R.C. 4503.234(B)(2) or (3) applies, in addition to or independent of any fine established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association; the proceeds of any fine so imposed must be distributed under R.C. 4503.234(C)(2).

(f) In all cases, participation in an alcohol and drug addiction program, subject to a specified limitation relating to the program's compliance with minimum standards.

(6) ***Use of EMHA***. If an offender is sentenced to a jail term under the provision described above in paragraph (2) or (3) and if, within 60 days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is to serve the term, the offender will not be able to begin serving it within the 60-day period following the date of sentencing, the court may impose an alternative sentence that includes a term of EMHA. As an alternative to a mandatory jail term of ten consecutive days required under the provision described above in paragraph (2), the court may

sentence the offender to five consecutive days in jail and not less than 18 consecutive days of EMHA, with the cumulative total of the jail time and the EMHA not exceeding six months. As an alternative to the mandatory jail term of 20 consecutive days required under the provision described above in paragraph (2), the court may sentence the offender to ten consecutive days in jail and not less than 36 consecutive days of EMHA, with the cumulative total of the jail time and the EMHA not exceeding six months. As an alternative to a mandatory jail term of 30 consecutive days required under the provision described above in paragraph (3), the court may sentence the offender to 15 consecutive days in jail and not less than 55 consecutive days of EMHA, with the cumulative total of the jail time and the EMHA not exceeding one year. As an alternative to the mandatory jail term of 60 consecutive days required under the provision described above in paragraph (3), the court may sentence the offender to 30 consecutive days in jail and not less than 110 consecutive days of EMHA, with the cumulative total of the jail time and the EMHA not exceeding one year. (R.C. 4511.19(G)(3).)

(7) ***Disposition of fines***. Under the bill, fines imposed for state OVI must be distributed as follows (R.C. 4511.19(G)(5)):

(a) $25 of the fine for a first offense in six years, $35 of the fine for a second offense in six years, $123 of the fine for a third offense in six years, and $210 of the fine for a fourth or subsequent offense in six years or for a state OVI felony is to be paid to an enforcement and education fund established by the legislative authority of the law enforcement agency that primarily was responsible for the arrest of the offender, as determined by the sentencing court. This share must be used by the agency to pay only those costs it incurs in enforcing the state OVI law or a municipal OVI ordinance and in informing the public of the laws governing the operation of a vehicle while under the influence of alcohol, the dangers of such operation, and other information relating to such operation and the consumption of alcoholic beverages.

(b) $50 of the fine imposed for a first offense in six years is to be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. If the offender is being sentenced for traditional OVI and was confined as a result of the offense prior to being sentenced for the offense but is not sentenced to a term of incarceration, the $50 is to be paid to the political subdivision that paid the cost of housing the offender during that period of confinement. This share must be used by the political subdivision to pay or reimburse incarceration or treatment costs it incurs in housing or providing drug and alcohol treatment to persons who commit state or municipal OVI, costs of any immobilizing or disabling device used on the offender's vehicle, and costs of EMHA equipment needed for persons who commit state OVI.

(c) $25 of the fine for a first offense in six years and $50 of the fine for a second offense in six years is to be deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of the sentencing court.

(d) $115 of the fine for a second offense in six years, $277 of the fine for a third offense in six years, and $440 of the fine for a fourth or subsequent offense in six years or for a state OVI felony is to be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. This share must be used by the political subdivision to pay or reimburse incarceration or treatment costs it incurs in housing or providing drug and alcohol treatment to persons who commit state or municipal OVI or an ordinance containing an equivalent offense, costs for any immobilizing or disabling device used on the offender's vehicle, and costs of EMHA equipment needed for persons who commit state OVI.

(e) The balance of the fine imposed is to be disbursed as otherwise provided by law.

(8) ***Reinstatement fees***. An offender convicted of either traditional state OVI or high-amount state OVI and who subsequently seeks reinstatement of his or her suspended license must pay a reinstatement fee, as described below in "***Reinstatement of suspended license or permit***" (R.C. 4511.19(G)(2)).

State OMVUAC--state OVUAC

Existing law--offense of state OMVUAC

Existing 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 one per cent but less than .10 of one per cent by weight of alcohol in his or her 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 his or her 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 his or her urine.

Existing law--penalties for state OMVUAC

In general, state OMVUAC is a misdemeanor of the fourth degree. But if, within one year of the offense, the offender has been convicted of an alcohol-related and vehicle-related offense (these offenses are the same as those that are identified above under "***Existing law--penalties for state OMVI***"), it is a misdemeanor of the third degree. In addition to or independent of all other

penalties, the offender's driver's or commercial driver's license or permit or nonresident operating privilege is suspended for not less than 60 days and not more than two years. (R.C. 4511.99(N) and 4507.16(E).)

Under existing law, if a person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended for a state OMVUAC conviction, the person is not entitled to request, and the judge or mayor may not grant to the person, occupational driving privileges if the person, within the preceding seven years, has been convicted of or pleaded guilty to three or more alcohol-related and vehicle-related offenses. Any other person whose license or privilege is under an OMVUAC suspension may file a petition alleging that the suspension would seriously affect the person's ability to continue the person's employment. Upon satisfactory proof that there is reasonable cause to believe that the suspension would seriously affect the person's ability to continue the person's employment, the court may grant the person occupational driving privileges during the period during which the suspension otherwise would be imposed. However, the judge or mayor may not grant occupational driving privileges to any person who, within seven years of the filing of the petition, has been convicted of or pleaded guilty to three or more alcohol-related or vehicle-related suspensions. The court also may not grant occupational driving privileges for employment as a driver of commercial motor vehicles to any person who is disqualified from operating a commercial motor vehicle and may not grant occupational driving privileges during the first 60 days of an OMVUAC suspension. (R.C. 4507.16(G).)

Operation of the bill--offense of state OMVUAC (renamed state OVUAC--see below)

The bill adds an additional prohibition to the offense of state OMVUAC (renamed state OVUAC--see below) that will apply in addition to the existing three prohibitions constituting the offense. The additional prohibition prohibits a person under 21 years of age from operating a vehicle, streetcar, or trackless trolley within Ohio if the person has a concentration of at least .03 of one per cent but less than .12 of one per cent by weight per unit volume of alcohol *in the person's blood serum or plasma*. Related to this change, it modifies the existing prohibition against a person under 21 years of age operating a vehicle within Ohio while having a concentration of at least .02 of one per cent but less than .10 of one per cent or more by weight of alcohol in his or her blood to specify that the prohibition pertains *only to whole blood* and is to be determined *per unit volume*. For all three existing prohibitions and the additional prohibition it adds, the bill specifies that the determination of having a "prohibited concentration of alcohol" is determined at the time of the person's operation of the vehicle, streetcar, or trackless trolley. Finally, the bill defines the term "operate," for purposes of R.C.

Chapter 4511., including state OVI, as "to cause or have caused movement of a vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking." (R.C. 4511.01(HHH) and 4511.19(B).)

Operation of the bill--penalties for state OMVUAC (renamed state OVUAC)

The bill relocates the general penalty provisions that apply to a violation of R.C. 4511.19(B), currently referred to as state OMVUAC, from R.C. 4511.99(N) and 4507.16(E) to R.C. 4511.19, makes certain changes in those penalties, and renames the offense as "operating a vehicle after underage alcohol consumption" or "state OVUAC." Under the bill (R.C. 4511.19(H), 4510.02(A)(4) and (6), and 4511.181, and repeal of R.C. 4507.16(E) and 4511.99(N)):

(1) ***Generally***. Except as otherwise described below, state OVUAC is a misdemeanor of the fourth degree. In addition to any other sanction imposed for the offense, the court must impose a Class 6 (definite period of three months to two years) license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege.

(2) ***Second or subsequent offense in one year***. If, within one year of the offense, the offender previously has been convicted of one or more state OVUAC or OVI violations or one or more other equivalent offenses, state OVUAC is a misdemeanor of the third degree. In addition to any other sanction imposed for the offense, the court must impose a Class 4 (definite period of one to five years) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege.

(3) ***Limited driving privileges***. Under the bill, any person whose license, permit, or nonresident operating privilege has been suspended for state OVUAC may file a petition for limited driving privileges during the suspension. (R.C. 4510.13.)

Definition of "equivalent offense" for purposes of state OVI, state OVUAC, and other provisions of R.C. Chapter 4511.

The bill defines the term "equivalent offense," for use in R.C. 4511.181 to 4511.197 (the definition also applies, by cross-reference, to provisions of the offense of endangering children; R.C. 2919.22). State OVI and state OVUAC are included within that range of sections. Under the bill, the term means any of the following: (1) the offense of state OVI or state OVUAC, (2) a violation of a municipal OVI ordinance (see "***Definition of "municipal OVI ordinance," etc.***," below), (3) the offense of "involuntary manslaughter" when the special sentencing

provisions of R.C. 2903.04(D) apply to the offender, (4) the offense of "aggravated vehicular homicide" or "aggravated vehicular assault," when it is based on the offender's commission of state OVI or a substantially equivalent municipal ordinance, (5) the offense of "aggravated vehicular homicide," "vehicular homicide," "vehicular manslaughter," or "vehicular assault," a violation of former R.C. 2903.07, or a violation of a substantially equivalent municipal ordinance, when the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or both, (6) a violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to state OVI or state OVUAC, or (7) a violation of a former Ohio law that was substantially equivalent to state OVI or state OVUAC. (R.C. 4511.181(A).)

Definition of "municipal OVI ordinance" and "municipal OVI offense" for purposes of state OVI, state OVUAC, and other provisions of R.C. Chapter 4511.

Numerous existing provisions that pertain to state OMVI, state OMVUAC, and the Implied Consent Law also pertain to violations of similar municipal ordinance offenses. The sections generally refer to these ordinance offenses as a violation of "any 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 relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine" (see, e.g., 4507.16(B), 4511.191, 4511.193, 4511.195, and 4511.99(A)).

The bill defines the terms "municipal OVI ordinance" and "municipal OVI offense" for purposes of R.C. 4511.181 to 4511.197 (state OVI and state OVUAC are within that range) as "any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine" and substitutes the term for the similar descriptive language in the existing statutes referred to in the preceding paragraph (R.C. 4511.181(C)).

Definition of "vehicle" for purposes of state OVI, state OVUAC, and other provisions of R.C. Chapter 4511.

Existing law

Existing law specifies that, as used in R.C. Chapters 4511. and 4513., "vehicle" means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except motorized wheelchairs, devices moved by power collected from overhead electric trolley wires, or used exclusively upon stationary rails or tracks, and

devices other than bicycles moved by human power (R.C. 4511.01(A)). State OVI and state OVUAC are within the range of sections to which the definition applies.

The definition is somewhat confusing relative to its treatment of human-powered bicycles, but Ohio courts generally have interpreted it as including a bicycle moved by human power as a vehicle. *State v. Shepard* (Hamilton Cty., 1981), 1 Ohio App.3d 104.

Operation of the bill

The bill clarifies that the definition of vehicle that applies in Chapters 4511. and 4513. includes a bicycle moved by human power. Under the bill, "vehicle" means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, *except that "vehicle" does not include* any motorized wheelchair, any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or *any device, other than a bicycle, that is moved by human power* (R.C. 4511.01(A)). Note that this definition also applies to the section containing the new offense of "having physical control of a vehicle while under the influence" that the bill enacts, but that, under the elements of that offense, the offense does not appear to apply regarding conduct involving a bicycle moved by human power (see "***New offense--having physical control of a vehicle while under the influence***," below).

Taking of chemical tests, use of tests in a criminal or juvenile proceeding, qualified immunity, and reports as prima facie proof regarding state OVI and state OVUAC

Generally

The bill revises the existing procedures relative to the taking of a chemical test under the state's Vehicle Implied Consent Law (see below) and to the use of those tests in a court proceeding. Under the bill, when a person submits to a chemical test under that Law, only a physician, a registered nurse, or a *qualified* technician, chemist, *or phlebotomist* may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content of the *whole blood, blood serum, or blood plasma*. As under existing law, this limitation does not apply regarding breath or urine samples. A person authorized to withdraw blood under this provision may refuse to withdraw it if, in that person's opinion, the physical welfare of the person would be endangered by withdrawing the blood.

Under the bill, in any criminal prosecution or juvenile court proceeding for a state OVI or state OVUAC violation or for an "equivalent offense" (see "***Definition of "equivalent offense," etc.***," above), the court may admit evidence

on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within two hours of the time of the alleged violation. (R.C. 4511.19(D)(1).)

Under the bill, in a criminal prosecution or juvenile court proceeding for a state OVI violation or for an "equivalent offense," if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentrations specified in the offense of state OVI (relating to "traditional OVI"), that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This provision does not limit or affect a criminal prosecution or juvenile court proceeding for a state OVUAC violation or for an "equivalent offense" that is substantially equivalent to state OVUAC. (R.C. 4511.19(D)(2).)

Upon the request of the person who was tested, the results of the chemical test must be made available to the person or the person's attorney, immediately upon completion of the chemical analysis. The person tested, at the person's own expense, may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test, in addition to any administered at the request of a law enforcement officer. The form to be read to the person under the Vehicle Implied Consent Law must state this fact. (R.C. 4511.19(D)(3).)

Qualified immunity

Existing law provides a qualified immunity from civil liability based upon assault and battery or any other cause of action other than malpractice for any physician, registered nurse, or qualified technician or chemist who so withdraws blood and for any medical facility at which it is withdrawn. The bill adds phlebotomists to the list of covered medical personnel and specifies that the immunity is not available to any of the medical personnel who engages in willful or wanton misconduct. (R.C. 4511.19(F).)

Laboratory reports as prima facie evidence

The bill specifies that, in general, in any criminal prosecution or juvenile court proceeding for a state OVI violation based on a prohibited concentration of alcohol, drugs of abuse, or a combination of them (either relating to "traditional OVI" or "high-amount OVI"), for a state OVUAC violation, or for an "equivalent offense" (see "***Definition of equivalent offense," etc.***," above) that is substantially equivalent to either offense, a laboratory report from any forensic laboratory certified by the Department of Health that contains an analysis of the whole blood,

blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified below must be admitted as prima facie evidence of the information and statements that the report contains. The laboratory report must contain all of the following: (1) the signature, under oath, of any person who performed the analysis, (2) any findings as to the identity and quantity of alcohol, a drug of abuse, or a combination of them that was found, (3) a copy of a notarized statement by the laboratory director or a designee that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties, and (4) an outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the Department of Health. (R.C. 4511.19(E)(1).)

Notwithstanding any other provision of law regarding the admission of evidence, such a report is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.

Such a report is not prima facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice. (R.C. 4511.19(E).)

Retention of license during appeal of state OVI or state OVUAC conviction

Under the bill, similar to existing law, any person whose license has been suspended subsequent to the person's conviction of state OVI or state OVUAC and who desires to retain the license during the pendency of an appeal, at the time sentence is pronounced, must notify the court of record or mayor's court that suspended the license of the person's intention to appeal. If the person so notifies the court, the court, mayor, or clerk of the court must retain the license until the appeal is perfected, and, if execution of sentence is stayed, the license must be returned to the person to be held by the person during the pendency of the appeal. If the appeal is not perfected or is dismissed or terminated in an affirmance of the conviction, then the license must be taken up by the court, mayor, or clerk, at the time of putting the sentence into execution, and the court must proceed in the same manner as if no appeal was taken. (R.C. 4511.197(F) and repeal of R.C. 4507.18.)

Miscellaneous changes regarding state OVI and state OVUAC

Treatment programs

The bill prohibits a court from sentencing an offender to an alcohol treatment program for a state OVI or state OVUAC conviction unless the treatment program complies with the minimum standards for such programs adopted by the Director of Alcohol and Drug Addiction Services. An offender who stays in a DIP program or in an alcohol treatment program under an order issued as part of a sentence for state OVI or OVUAC must pay the cost of the stay in the program. If the court determines that the offender staying in an alcohol treatment program is unable to pay the cost of the stay, the court may order that the cost be paid from the court's indigent drivers' alcohol treatment fund. (R.C. 4511.19(I).)

Effect of appeal of conviction

As under existing law, if a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended as part of a sentence for a state OVI or OVUAC conviction files an appeal regarding any aspect of the person's trial or sentence, the appeal itself does not stay the operation of the suspension (R.C. 4511.19(J)).

Applicable definitions

The bill specifies that all terms defined in R.C. 4510.01, as enacted in the bill (see "***Reorganization, relocation, and classification of suspensions***," above), apply regarding state OVI and state OVUAC. If the meaning of a term so defined conflicts with the meaning of the same term as defined in the general Vehicle Law definitions contained in R.C. 4501.01 and R.C. 4511.01, the term as defined in R.C. 4510.01 applies regarding state OVI and state OVUAC (R.C. 4511.19(K)).

Rules to use in felony state OVI cases

Existing R.C. 2937.46 authorizes the Ohio Supreme Court, in the interest of uniformity of procedure in the various courts and for the purpose of promoting prompt and efficient disposition of traffic cases, to adopt uniform rules for practice and procedure in courts inferior to the courts of common pleas, that are not inconsistent with R.C. Chapter 2937. All of the Rules so adopted are binding on all courts inferior to the courts of common pleas. The Court has adopted a series of rules under this authority. The bill specifies that: (1) the Ohio Traffic Rules in effect on its effective date *do not apply to felony state OVI violations*, (2) that, except as described in clause (3), the Rules of Criminal Procedure apply to felony state OVI violations, and (3) that if, on or after the bill's effective date, the

Supreme Court modifies the Ohio Traffic Rules to provide procedures to govern felony state OVI violations, the modified Rules will apply to felony state OVI violations. Related to this provision, the bill also specifies that the General Assembly recommends to the Supreme Court that it amend the Ohio Traffic Rules to provide procedures to govern felony OVI violations. (R.C. 2937.46 and 4511.19(L); Section 3.)

Conforming changes

The bill modifies numerous existing provisions, generally by changing cross-references, changing terminology, or making other technical changes, to conform them to its provisions described above that modify the offense of state OVI (state OMVI) and that relocate the penalties for the offense from existing R.C. 4511.99 to R.C. 4511.19 (R.C. 733.40, 1901.024, 1901.31(F), 1905.01(B), 1905.201, 1907.20(C), 2743.51, 2743.52, 2919.22(C)(1), (E)(5)(e), (G)(2), and (H)(2)(a), 2929.01(Y), (II), (JJ), and (QQ), 2929.13(A) and (G), 2929.14(D)(4), 2929.15(A)(1), 2929.16(A), 2929.17, 2929.18(B)(3), 2929.19(C), 2929.23(A) and (B), 2937.222, 3793.02, 3793.10, 4501.17, 4503.233(A), 4503.234(B) and (F), 4506.01(A)(1), 4507.164(A) and (B), 4511.191(F) and (H), 4511.195(C), 5120.032, 5120.033, and 5120.161).

Fines, impoundment, and forfeiture for municipal OMVI offenses

Existing law

Under existing law, $25 of any fine imposed for a 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 relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine (municipal OMVI) must be deposited into a specified municipal or county indigent drivers alcohol treatment fund created under the Vehicle Implied Consent Law (R.C. 4511.193(A)).

Also, under existing law, if a person is convicted of municipal OMVI and if, within six years of the current offense, the offender has been convicted of any offense that is considered in determining the sentence of an offender convicted of state OMVI (see "***Existing law--penalties for state OMVI***," above), or if the other circumstances described in paragraph (2), below, apply, the court, in addition to and independent of any sentence it imposes upon the offender for the offense, 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, and subject to an existing "innocent owner" exception contained in R.C. 4503.235, must do whichever of the following is applicable (R.C. 4511.193(B); also see related provisions in R.C. 4507.164(B)):

(1) ***Second offense in six years***. Except as otherwise described in paragraph (2), if, within six years of the current offense, the offender has been convicted of one of those offenses, the court 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 (see "***Vehicle impoundment, immobilization, and forfeiture procedures***," below).

(2) ***Third or subsequent offense in six years or prior felony state OMVI conviction***. If, within six years of the current offense, the offender has been convicted two or more times of any of those offenses, or if the offender previously has 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 court must order the criminal forfeiture to the state of the vehicle the offender was operating at the time of the offense (see "***Vehicle impoundment, immobilization, and forfeiture procedures***," below).

Operation of the bill

The bill changes the reference to municipal OMVI contained in the fine-related provisions described above so that, instead of referring to municipal ordinances relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, it parallels the new provisions the bill includes in the offense of state OVI and refers to *a municipal OVI ordinance*, as described above in "***Definition of "municipal OVI ordinance" for purposes of state OVI, etc***." It also expands the reference to municipal OMVI contained in the vehicle immobilization and forfeiture provisions described above in a similar manner. It also replaces the listing of offenses that are used in determining whether a person convicted of municipal OMVI is subject to the impoundment and immobilization or forfeiture provisions with a reference to conviction of state OVI or OVUAC or any other "equivalent offense," as defined in the bill (see "***Definition of "equivalent offense" for purposes of state OVI and other provisions of R.C. Chapter 4511.***," above), and specifies that those provisions apply only if the vehicle the offender was operating at the time of the arrest is registered in the offender's name. (R.C. 4511.193; also see related provisions in R.C. 4507.164(B).)

Vehicle impoundment, immobilization, and forfeiture procedures

Existing law

Existing law contains detailed procedures that apply regarding the immobilization and impoundment, or the criminal forfeiture to the state, of vehicles used in state OMVI or municipal OMVI violations, when the offender has one or more prior convictions of any of a list of specified offenses and R.C.

4511.193 or 4511.99 requires the immobilization and impoundment or the forfeiture. The provisions also apply regarding certain "driving under license suspension" violations, as discussed in earlier parts of this analysis, and regarding "wrongful entrustment" violations, as discussed below in "***Offense of wrongful entrustment***." Under existing law, reflecting the existing penalty provisions of R.C. 4511.99 regarding state OMVI and the existing provisions of R.C. 4511.193 regarding municipal OMVI, the immobilization, impoundment, and forfeiture provisions apply regarding the vehicle used in the offense even if the person who commits the offense (the vehicle operator) is not the vehicle's owner. (R.C. 4503.233 and 4503.234.)

Existing law contains related provisions, referred to as the "innocent owner exception," to protect vehicle owners whose vehicles were used in a state OMVI or municipal OMVI offense (or a driving under suspension or wrongful entrustment offense) that is subject to the immobilization, impoundment, and forfeiture provisions, but who were not involved in the offense and did not know or have reason to suspect that the vehicle would be used in the offense or who would suffer a substantial injustice if the vehicle were immobilized or forfeited. A vehicle owner who wishes to utilize the exception must file a motion with the court requesting that the immobilization and impoundment order, or the forfeiture order, not be issued. The vehicle cannot be immobilized or forfeited if the person who was convicted of the offense in question is not the owner of the vehicle that was used or involved in the offense or violation, if the vehicle owner's motion asserts the grounds that the vehicle owner was innocent of any wrongdoing relative to the offense or violation, and any of the following applies:

(1) If the vehicle in question was leased or rented for more than 30 days to the person who was convicted of the offense in question, the prosecutor in the case fails to establish to the court, at trial or subsequent to the filing of the motion and by a preponderance of the evidence, one or more of the following: (a) that the person did not present the vehicle owner or an agent of the owner with a valid driver's or commercial driver's license or permit at the time the person leased or rented the vehicle, (b) that the person appeared to be under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse at the time the person leased or rented the vehicle, (c) that the vehicle owner knew or should have known after a reasonable inquiry that the vehicle was used or involved or likely to be used or involved in the offense, or (d) that the vehicle owner or the owner's agent expressly or impliedly consented to the use or involvement of the vehicle in the offense.

(2) Except as otherwise described below, if the vehicle in question was not leased or rented to the person who was convicted of the offense, the prosecutor in the case fails to establish to the court, at trial or subsequent to the filing of the

motion and by a preponderance of the evidence, one or more of the following: (a) that the vehicle owner knew or should have known after a reasonable inquiry that the vehicle was used or involved or likely to be used or involved in the offense, or (b) that the vehicle owner or the owner's agent expressly or impliedly consented to the use or involvement of the vehicle in the offense.

(3) The court determines that the immobilization or the forfeiture would be a substantial injustice to the vehicle owner.

The "innocent owner exception" also provides that the vehicle impoundment, immobilization, and forfeiture procedures described above do not apply to vehicles that are being rented or leased for a period of 30 days or less, and do not apply to a vehicle if it is shown that the vehicle is owned by the employer of the operator, that the employer and operator are different persons or entities, and that the employer is subject to and in full compliance with the Commercial Driver's License Law. (R.C. 4503.235.)

Operation of the bill

The bill modifies the immobilization, impoundment, and forfeiture procedures to conform them to the changes it makes in the state OVI (state OMVI) penalty provisions regarding vehicle immobilization, impoundment, and forfeiture for state OMVI and the provisions of R.C. 4511.193 regarding vehicle immobilization, impoundment, and forfeiture for municipal OMVI (it makes similar changes regarding the driving under suspension and the wrongful entrustment provisions). Under the bill, the state OVI and the R.C. 4511.193 immobilization, impoundment, and forfeiture provisions apply regarding a vehicle used in a state OVI or municipal OVI violation *only if the vehicle is registered in the name of the offender*. The bill changes the terminology of the immobilization, impoundment, and forfeiture procedures to reflect this change and repeals the existing "innocent owner" exception that is available in potential vehicle immobilization, impoundment, and forfeiture situations.

The bill modifies a few provisions, generally by changing cross-references or by making other technical changes, to conform them to its changes described above that relate to vehicle impoundment, immobilization, and forfeiture (R.C. 2743.191(A), 4501.19, 4503.233, 4503.234, and 4503.236 and repeal of R.C. 4503.235).

Pretrial seizure and retention of vehicle involved in OMVI (OVI) offense

Existing law

Under existing law, if a person is arrested for a state OMVI or municipal OMVI violation and if the person, upon conviction of the offense, would be subject to the issuance of a vehicle immobilization and impoundment order or a vehicle criminal forfeiture order as a result of the conviction, the arresting officer or another officer of the agency that employs the arresting officer must seize the vehicle that the person was operating at the time of the offense and its license plates. The law provides detailed procedures that govern the disposition of the vehicle after its seizure, including its possible return in specified circumstances to the vehicle owner.

A vehicle seized under this provision must be safely kept at the place to which it is towed or otherwise moved by the law enforcement agency until the vehicle operator's initial appearance relative to the charge in question. If, at the initial appearance, the vehicle operator pleads guilty or no contest to the state OMVI or municipal OMVI violation: (1) the court must impose sentence upon the vehicle operator as provided by law or ordinance, (2) the court, except as described below and subject to the "innocent owner" exception (see "***Vehicle impoundment, immobilization, and forfeiture procedures***," above), must order the immobilization of the vehicle and the impoundment of its license plates or the criminal forfeiture of the vehicle, whichever is applicable, and (3) the vehicle and its license plates cannot be returned or released to the vehicle owner. If the vehicle operator is not the vehicle owner and the owner is not present at the appearance and if the court believes that the owner was not provided adequate notice of the initial appearance, the court may refrain for a period of time not exceeding seven days from ordering the immobilization of the vehicle and the impoundment of its license plates, or the criminal forfeiture of the vehicle so that the owner may appear before the court to present evidence as to why the court should not order the immobilization and impoundment or forfeiture.

If, at any time, the charge that the vehicle operator committed the state OMVI or municipal OMVI violation is dismissed for any reason, the court must order that the vehicle seized at the time of the arrest and its license plates immediately be released to the vehicle owner subject to the payment of expenses or charges incurred in the removal and storage of the vehicle.

If a vehicle seized under the provision is not returned or released to the vehicle owner as described above, the vehicle or its license plates must be retained until the final disposition of the charge in question. Upon the final disposition of that charge, the court must do whichever of the following is applicable: (1) if the vehicle operator is convicted of the state OMVI or municipal OMVI violation, the

court must impose sentence upon the vehicle operator as provided by law or ordinance and, subject to the innocent owner exception, must order the immobilization and impoundment of the vehicle or the criminal forfeiture of the vehicle (see "***Vehicle impoundment, immobilization, and forfeiture procedures***," above), whichever is applicable, (2) if the vehicle operator is found not guilty of the violation, the court must order that the vehicle and its license plates immediately be released to the vehicle owner upon the payment of any expenses or charges incurred in its removal and storage, or (3) if the charge that the vehicle operator committed the state OMVI or municipal OMVI violation is dismissed for any reason, the court must order that the vehicle and its license plates immediately be released to the vehicle owner upon the payment of any expenses or charges incurred in its removal and storage.

The vehicle owner may be charged expenses or charges incurred in the removal and storage of the immobilized vehicle. The court with jurisdiction over the case, after notice to all interested parties, including lienholders, and after an opportunity for them to be heard, if the vehicle owner fails to appear in person, without good cause, or if the court finds that the vehicle owner does not intend to seek release of the vehicle at the end of the period of immobilization or that the vehicle owner is not or will not be able to pay the expenses and charges incurred in its removal and storage, may order that title to the vehicle be transferred, in order of priority, first into the name of the person or entity that removed it, next into the name of a lienholder, or lastly into the name of the owner of the place of storage. Special provisions apply regarding any lienholder that receives title under such a court order. (R.C. 4511.195.)

Operation of the bill

The bill modifies the pretrial vehicle seizure and retention provisions to conform them to the changes it makes in the state OVI penalty provisions regarding vehicle immobilization, impoundment, and forfeiture and the provisions of R.C. 4511.193 regarding vehicle immobilization, impoundment, and forfeiture for municipal OMVI (see "***State OMVI--state OVI***" and "***Vehicle impoundment, immobilization, and forfeiture procedures***," above). Under the bill, the state OVI and the R.C. 4511.193 immobilization, impoundment, and forfeiture provisions apply regarding a vehicle used in a state OVI or municipal OVI violation *only if the vehicle used in the offense was registered in the offender's name*. The bill changes the terminology, and many of the procedures, of the pretrial seizure and retention provisions to reflect this change. It also utilizes the term "municipal OVI ordinance" (see "***Definition of "municipal OVI ordinance" for purposes of state OVI, etc.***," above) and the term "equivalent offense" as it is defined in the bill (see above), eliminates references to the "innocent owner" exception the bill repeals, adds a new "fourth option" that applies to the court upon the final disposition of

the charge that was the basis for the seizure of the vehicle, and clarifies that the arrested person (except as described below) generally may be charged expenses or charges incurred for the vehicle's removal and storage. Under the bill's fourth option, instead of using any of the three existing options as described in the second preceding paragraph, if the impoundment of the vehicle in question was not authorized under the pretrial seizure and retention provision as amended by the bill, the court must order that the vehicle and its license plates be returned immediately to the arrested person or, if the arrested person is not the vehicle owner, to the vehicle owner and order that the state or a political subdivision of the law enforcement agency served by the law enforcement officer who seized the vehicle pay all expenses and charges incurred in its removal and storage. (R.C. 4511.195.)

Vehicle Implied Consent Law

Existing law

The existing Vehicle Implied Consent Law specifies that any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular traffic or parking within Ohio is deemed to have given consent to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's blood, breath, or urine if arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or both or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine. If specified procedures are complied with, and if a person is asked to submit to such a test and either refuses or submits to the test and has a prohibited concentration in his or her blood, breath, or urine, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended. The Law contains procedures for appealing a suspension so imposed. At the end of the period of a suspension imposed under that Law, the person may get his or her license back if the person: (1) shows proof of financial responsibility, a policy of liability insurance of a specified nature, or proof that the person is able to respond to damages in an amount at least equal to a minimum specified amount, and (2) pays to the Bureau of Motor Vehicles (BMV) a single license reinstatement fee of $425, to be deposited in a specified manner (see "***Reinstatement of suspended license or permit***," below). (R.C. 4511.191.)

Operation of the bill

The bill modifies and expands some of the provisions of the existing Vehicle Implied Consent Law, simplifies some of the procedures that pertain to that Law, and relocates much of the substance of that Law from existing R.C. 4511.191 into several other sections.

General implied consent. Under the bill, any person who operates a *vehicle, streetcar, or trackless trolley* upon a highway or any public or private property used by the public for vehicular traffic or parking within Ohio or *who is in physical control of a vehicle, streetcar, or trackless trolley* is deemed to have given consent to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's *whole blood, blood serum or plasma*, breath, or urine if arrested for the offense of state OVI or state OVUAC, as they exist under the bill, for a violation of a municipal OVI ordinance, or for the new offense enacted in the bill of "having physical control of a vehicle while under the influence" (see "***New offense--having physical control of a vehicle while under the influence***," below). The tests under this provision must be administered at the request of a law enforcement officer having reasonable grounds to believe the person was committing one of those offenses or violations. The officer's law enforcement agency must designate which test or tests is to be administered. Any person who is dead or unconscious or who otherwise is in a condition rendering the person incapable of refusal is deemed to have consented as described above, and the test or tests generally may be administered. (R.C. 4511.191(A).)

Giving of advice by arresting officer. The bill provides that, when a person is arrested for state OVI, state OVUAC, a violation of a municipal OVI ordinance, or the new "physical control" offense, the arresting law enforcement officer must give the person a specified type of advice. The advice must be in a written form containing the information described below and must be read to the person. The form must contain a statement that it was shown to the person under arrest and read to the person by the arresting officer. One or more persons must witness the officer's reading of the form and certify to that fact by signing the form. The bill also specifies that the person must be read the form before the person may be requested to submit to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's whole blood, blood serum or plasma, breath, or urine. (R.C. 4511.192(A) and (B).)

The form must read as follows (R.C. 4511.192(B)):

"You now are under arrest for (state with specificity the offense for which the person was arrested--operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them in violation of state law, operating a vehicle after underage alcohol consumption in violation of state law, having physical control of a vehicle while under the influence in violation of state law, or a violation of a municipal OVI ordinance).

If you refuse to take any chemical test or tests required under R.C. 4511.191, you will be subject to at least the immediate suspension of your privilege to operate a vehicle in Ohio and the payment of a reinstatement fee.

Unless you are under arrest for having physical control of a vehicle while under the influence, if you take any chemical test or tests required under R.C. 4511.191 and are found to be at or over the prohibited amount of alcohol in your whole blood, blood serum or plasma, breath, or urine as set by state law for the offense of OVI, you will be subject to at least the immediate suspension of your privilege to operate a vehicle in Ohio and the payment of a reinstatement fee. These suspension and reinstatement fee sanctions do not apply if you are under arrest for having physical control of a vehicle and you take a chemical test or tests, regardless of the outcome of the test or tests.

In any case, if you take a chemical test or tests, you may have an independent chemical test taken at your own expense."

Duties of arresting officer when chemical test is not requested. Under the bill, if a person is arrested as described above and the arresting law enforcement officer does not ask the person to submit to a chemical test or tests, the officer must seize the person's Ohio or out-of-state driver's or commercial driver's license or permit and immediately forward it to the court in which the arrested person is to appear on the charge. If the arrested person does not have the person's license or permit or it is not in the person's vehicle, the officer must order the person to surrender it to the officer's law enforcement agency within 24 hours after the arrest, and, upon the surrender, the agency immediately must forward it to the court in which the person is to appear on the charge. Upon receipt of the license or permit, the court must retain it pending the arrested person's initial appearance and any action taken under R.C. 4511.196, as described below in "***R.C. 4511.196 suspension***." (R.C. 4511.192(C).)

Duties of arresting officer when chemical test is requested. Under the bill, if a law enforcement officer arrests a person as described above, if the arresting officer asks the person to submit to a chemical test or tests and advises the person of the consequences of the person's refusal or submission as described above, and if either the person refuses to submit to the test or tests or, unless the arrest was for the "physical control" offense, the person submits to the test or tests and the results indicate a prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, the arresting officer must do all of the following (R.C. 4511.192(D)(1)):

(1) On behalf of the Registrar of Motor Vehicles (the Registrar), notify the person that, independent of any penalties or sanctions imposed, the person's Ohio driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately, that the suspension will last at least until the person's initial appearance on the charge, which will be held within five days after the date of the person's arrest or the issuance of a citation to the person, *and that the person*

may appeal the suspension at the initial appearance or during the period of time ending 30 days after that initial appearance;

(2) Seize the person's driver's or commercial driver's license or permit and immediately forward it to the Registrar. If the arrested person does not have the person's license or permit or it is not in the person's vehicle, the officer must order the person to surrender it to the officer's law enforcement agency within 24 hours after the person is given notice of the suspension, and, upon the surrender, the officer's agency immediately must forward it to the Registrar.

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

(4) Send to the Registrar, within 48 hours after the arrest, a sworn report that includes all of the following statements: (a) that the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was committing state OVI, state OVUAC, a violation of a municipal OVI ordinance, or the new offense of "having physical control of a vehicle while under the influence," (b) that the person was arrested and charged with a violation described in clause (a), (c) that the officer asked the person to take the designated chemical test or tests, advised the person as described above of the consequences of submitting to, or refusing to take, the test or tests, and gave the person the required form, and (d) that either the person refused to submit to the test or tests or, unless the arrest was for the "physical control offense," the person submitted to the test or tests and the test results indicate a prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense.

The above-described provisions do not apply to a person who is arrested for the new offense of "having physical control of a vehicle while under the influence," who is asked by a law enforcement officer to submit to a chemical test or tests by a law enforcement officer, and who submits to the test or tests, regardless of the amount of alcohol that the test results indicate is present in the person's whole blood, blood serum or plasma, breath, or urine (R.C. 4511.192(D)(2)).

Delivery and effect of officer's sworn report. The arresting officer must give the sworn report the officer completes to the arrested person at the time of the arrest, or the Registrar must send it to the person by regular first class mail as soon thereafter as possible, but not later than 14 days after receipt of the report. An arresting officer may give an unsworn report to the arrested person at the time of the arrest if it is complete when given to the arrested person and subsequently is sworn to by the arresting officer. As soon as possible, but not later than 48 hours

after the arrest, the arresting officer must send a copy of the sworn report to the court in which the arrested person is to appear on the charge for which the person was arrested.

The arresting officer's sworn report is prima facie proof of the information and statements that it contains. It must be admitted and considered as prima facie proof of the information and statements it contains in any appeal under the bill relative to any suspension of a person's license, permit, or privilege under the Vehicle Implied Consent Law (see "***Appeal of suspension***," below) that results from the arrest covered by the report. (R.C. 4511.192(E) and (F).)

Suspension for refusal to take a chemical test. Under the bill, upon receipt of the sworn report of a law enforcement officer who arrested a person for committing state OVI, state OVUAC, a violation of a municipal OVI ordinance, or the new offense of "having physical control of a vehicle while under the influence" that was completed and sent to the Registrar and a court as described above and that is 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 person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer and the period of the suspension.

The suspension, which is subject to appeal as described below in "***Appeal of suspension***," is for whichever of the following periods applies: (1) except when clause (2), (3), or (4) applies, the suspension is a Class C (one year) administrative suspension, (2) if the arrested person, *within six years* of the date of the refusal, had refused one previous request to consent to a chemical test, the suspension is a Class B (two years) administrative suspension, (3) if the arrested person, *within six years* of the date of the refusal, had refused two previous requests to consent, the suspension is a Class A (three years) administrative suspension, and (4) if the arrested person, *within six years* of the date of refusal, had refused three or more previous requests to consent, the suspension is for five years. The Registrar must terminate a suspension, or a denial of a license or permit, imposed under this provision upon receipt of a notice that the person has entered a plea of guilty to, or has been convicted of, state OVI or state OVUAC or a violation of a municipal OVI ordinance, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial. Also, the Registrar must credit against any judicial suspension of a person's license, privilege, or permit imposed by the sentencing judge as a sanction for conviction of the offense of state OVI or state OVUAC or for a violation of a municipal OVI ordinance any time during which the person serves a related suspension imposed under the provision described in this paragraph. (R.C. 4511.191(B) and 4510.02(B).)

Suspension for taking and "failing" a chemical test. Upon receipt of the sworn report of a law enforcement officer who arrested a person for committing state OVI, state OVUAC, or a violation of a municipal OVI ordinance that was sent to the Registrar and a court as described above and that is in regard to a person who took the designated chemical test and whose test results indicate that the person's *whole blood, blood serum or plasma*, breath, or urine contained a concentration specified in state OVI as a prohibited concentration, the Registrar must enter into the Registrar's records the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer and the period of the suspension. This suspension does not apply to, and cannot be imposed upon, a person arrested for the new offense of "having physical control of a vehicle while under the influence" who submits to a designated chemical test.

The suspension, which is subject to appeal as described below in "***Appeal of suspension***," is for whichever of the following periods applies: (1) except when clause (2), (3), or (4) applies, the suspension is a Class E (three months) administrative suspension, (2) if the arrested person, *within six years* of the date the test was conducted, *has been convicted* one time of state OVI, state OVUAC, or an equivalent offense (see "***Definition of "equivalent offense . . .***," above), the suspension is a Class C (one year) administrative suspension, (3) if the arrested person, *within six years* of the date the test was conducted, has been convicted two times of state OVI, state OVUAC, or an equivalent offense, the suspension is a Class B (two years) administrative suspension, and (4) if the arrested person, *within six years* of the date the test was conducted, has been convicted more than two times of state OVI, state OVUAC, or an equivalent offense, the suspension is a Class A (three years) administrative suspension. The Registrar must terminate a suspension, or a denial of a license or permit, imposed under this provision upon receipt of a notice that the person has entered a plea of guilty to, or has been convicted of, state OVI, state OVUAC, or a violation of a municipal OVI ordinance, if the offense for which the conviction is had or the plea is entered arose from the same incident that led to the suspension or denial. Also, the Registrar must credit against any judicial suspension of a person's license or permit imposed by the sentencing judge as a sanction for conviction of the offense of state OVI or state OVUAC or for a violation of a municipal OVI ordinance any time during which the person serves a related suspension imposed under the provision described in this paragraph. (R.C. 4511.191(C) and 4510.02(B).)

Taking effect of the suspension. A suspension of a person's license, permit, or privilege under the bill's provisions for refusing to take a chemical test, or for taking and "failing" a chemical test, as described above, is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent finding that the person is

not guilty of the charge in question does not affect the suspension. (R.C. 4511.191(D)(1).)

Notification of officials from another state. The bill retains an existing provision that specifies that, when it finally has been determined under Ohio law that a nonresident's operating privilege has been suspended, the Registrar must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license (R.C. 4511.191(E)).

Time of initial appearance. If a person is arrested for state OVI, state OVUAC, a violation of a municipal OVI ordinance, or the new offense of "having physical control of a vehicle while under the influence," regardless of whether the person's license or permit or nonresident operating privilege is or is not suspended under any provision of law, the person's initial appearance on the charge resulting from the arrest must be held within five days of the person's arrest or the issuance of the citation to the person, subject to any continuance granted by the court under the provisions described below in "***Appeal of suspension***," regarding the issues specified in those provisions (R.C. 4511.191(D)(2) and 4511.196(A)).

Appeal of suspension. The bill relocates and modifies the existing provisions that pertain to the appeal of a license suspension imposed under the Vehicle Implied Consent Law. Under the bill, if a person is arrested for state OVI, state OVUAC, a municipal OVI ordinance violation, or the new offense of "having physical control of a vehicle while under the influence," as described below, and if the person's driver's or commercial driver's license or permit or nonresident operating privilege is so suspended, the person may appeal the suspension at the person's initial appearance on the charge resulting from the arrest *or within the period ending 30 days after the person's initial appearance on that charge*, in the court in which the person will appear on that charge. If the person appeals the suspension, the appeal itself does not stay the operation of the suspension. If the person appeals the suspension, either the person or the Registrar may request a continuance of the appeal and the court may grant the continuance. The court also may continue the appeal on its own motion. Neither the request for, not the granting of, a continuance stays the subject suspension, unless the court specifically grants a stay. An appeal must be filed in the municipal court, county court, juvenile court, mayor's court, or court of common pleas with jurisdiction over the charge in relation to which the person was arrested. (R.C. 4511.197(A) and (B).)

If a person appeals a suspension as described above, the scope of the appeal is limited to determining whether one or more of the following conditions have not been met: (1) whether the arresting law enforcement officer had reasonable ground to believe the arrested person was committing state OVI, state OVUAC, a

violation of a municipal OVI ordinance, or the new offense of "having physical control of a vehicle while under the influence," as described below, and whether the arrested person was in fact placed under arrest, (2) whether the law enforcement officer requested the arrested person to submit to the chemical test or tests designated under law, (3) whether the arresting officer informed the arrested person of the consequences of refusing to be tested or of submitting to the test or tests, (4) whether the arrested person refused to submit to the chemical test or tests requested by the officer, or whether the arrest was for state OVI, state OVUAC, or for a violation of a municipal OVI ordinance and, if it was, whether the chemical test results indicate that the arrested person's whole blood, blood plasma or serum, breath, or urine contained a concentration of alcohol prohibited under state OVI at the time of the alleged offense. A person who appeals a suspension has the burden of proving, by a preponderance of the evidence, that one or more of these conditions has not been met. If, during the appeal, the judge or magistrate of the court or the mayor of the mayor's court determines that all of those conditions have been met, the judge, magistrate, or mayor must uphold the suspension, continue the suspension, and notify the Registrar of the decision on a form approved by the Registrar. (R.C. 4511.197(C) and (D).)

Generally, if a suspension imposed under the Vehicle Implied Consent Law, as described above, is upheld on appeal or if the subject person does not appeal the suspension, the suspension continues until the complaint alleging the violation for which the person was arrested and in relation to which the suspension was imposed is adjudicated on the merits or terminated pursuant to law. If the suspension was imposed for a refusal to submit to a requested test and it is continued under this provision, any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test does not terminate or otherwise affect the suspension. If the suspension was imposed because the person had a prohibited concentration of alcohol in the person's whole blood, blood plasma or serum, breath, or urine in relation to an *alleged misdemeanor state OVI* or OVUAC violation or violation of a municipal OVI ordinance and it is continued under this provision, the suspension terminates if, for any reason, the person subsequently is found not guilty of the charge that resulted in the person taking the chemical test or tests. (R.C. 4511.197(D).)

If, during the appeal, the judge or magistrate of the trial court or the mayor of the mayor's court determines that one or more of the conditions specified in the second preceding paragraph have not been met, the judge, magistrate, or mayor must: (1) terminate the suspension, subject to the imposition of a new suspension under R.C. 4511.196 (see '***R.C. 4511.196 suspension***," below), (2) notify the Registrar of the decision on a form approved by the Registrar, and (3) except as provided under R.C. 4511.196, order the Registrar to return the driver's or commercial driver's license or permit to the person or to take any other measures

that may be necessary, if the license or permit was destroyed under law, to permit the person to obtain a replacement license or permit from the Registrar or a deputy registrar in accordance with law. The court also must issue to the person a court order, valid for not more than ten days from the date of issuance, granting the person operating privileges for that period. (R.C. 4511.197(D).)

Except as otherwise described in this paragraph, if a person whose driver's or commercial driver's license or permit or nonresident operating privilege was suspended under the Vehicle Implied Consent Law appeals the suspension as described above, the prosecuting attorney of the county in which the arrest occurred represents the Registrar in the appeal. If the arrest occurred within a municipal corporation within the jurisdiction of the court in which the appeal is conducted, the city director of law, village solicitor, or other chief legal officer of that municipal corporation represents the Registrar. If the appeal is conducted in a municipal court, the Registrar is represented as provided in the provision of Municipal Court Law that governs prosecutions in municipal courts. If the appeal is conducted in a mayor's court, the city director of law, village solicitor, or other chief legal officer of the municipal corporation that operates that mayor's court represents the Registrar. (R.C. 4511.197(G).)

Limited driving privileges. Any person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended pursuant to the Vehicle Implied Consent Law may file a petition requesting limited driving privileges in the common pleas court, municipal court, county court, mayor's court, or juvenile court with jurisdiction over the related criminal or delinquency case. The petition may be filed at any time subsequent to the date on which the arresting law enforcement officer serves the notice of suspension upon the arrested person but no later than 30 days after the arrested person's initial appearance or arraignment. Upon the making of a request, limited driving privileges may be granted under the bill's R.C. 4510.021 and 4510.13, regardless of whether the person appeals the suspension or the decision of the court on the appeal, and, if the person has so appealed the suspension or decision, regardless of whether the matter has been heard or decided by the court. The person must pay the costs of the proceeding, notify the Registrar of the filing of the petition, and send the Registrar a copy of the petition. The court may not grant the person limited driving privileges when prohibited by the Vehicle Implied Consent Law or R.C. 4510.13. (R.C. 4511.197(E).)

Giving of information and notice regarding actions taken under the suspension appeal provision. The bill requires the court to give information in writing to the Registrar of any action taken with respect to the appeal of a suspension under the Vehicle Implied Consent Law. Additionally, when it finally has been determined that a nonresident's privilege to operate a vehicle within Ohio

has been suspended, the Registrar must give information in writing of the action taken to the motor vehicle administrator of the state of the nonresident's residence and of any state in which the nonresident has a license. (R.C. 4511.197(H) and (I).)

Conforming changes. The bill modifies a few existing provisions, generally by changing cross-references or making other technical changes, to conform them to its changes described above relative to the Vehicle Implied Consent Law (R.C. 2919.22(C)(1) and 4510.53(B)).

Reinstatement of suspended license or permit

Existing law

Existing law provides that at the end of the period of a suspension of a person's license or permit under the existing Vehicle Implied Consent Law (for refusing to take a chemical test or for taking and "failing" a chemical test), under the existing provisions requiring the suspension of a license or permit as a result of a state OMVI or municipal OMVI conviction, or under the existing provisions of R.C. 4511.196 authorizing the suspension of a license or permit at a person's initial appearance (see "***R.C. 4511.196 suspension***," below), and upon the request of the person whose 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 occurrence of all of the following conditions (R.C. 4511.191(L)):

(1) A showing by the person that the person has proof of financial responsibility, a policy of liability insurance of a specified nature, or proof that the person is able to respond to damages in an amount at least equal to a minimum specified amount;

(2) Subject to the limitation described in (3), below, payment by the person to the BMV of a license reinstatement fee of $425. The reinstatement fee must be deposited in the State Treasury and credited as follows: (a) $112.50 must be credited to the Drivers' Treatment and Intervention Fund, to be used in a specified manner, (b) $75 must be credited to the Reparations Fund, (c) $37.50 must be credited to the Indigent Drivers Alcohol Treatment Fund, to be used in a specified manner, (d) $75 must be credited to the Ohio Rehabilitation Services Commission to be used in a specified manner, (e) $75 must be credited to the Drug Abuse Resistance Education Programs Fund (DARE Fund), to be used by the Attorney General for specified purposes (these purposes are identified in R.C. 4511.191(L)(4)), (f) $30 must be credited to the State Bureau of Motor Vehicles Fund, and (g) $20 must be credited to the Trauma and Emergency Medical Services Grants Fund;

(3) If a person's license or permit is suspended under any of the provisions described above, or any combination of those suspensions, and if the suspensions arise from a single incident or a single set of facts and circumstances, the person is liable for payment of, and shall be required to pay to the BMV, only one reinstatement fee of $425. The reinstatement fee must be distributed by the BMV as described above under (2)(a) to (g).

Operation of the bill

The bill expands the license reinstatement provisions so that they also apply regarding a person whose license is suspended for a conviction of the new offense of "having physical control of a vehicle while under the influence" as described below. Otherwise, the bill retains the amount and the manner of distribution of the required license reinstatement fee, making only a few modifications to the existing provisions. It conforms the section references to the types of suspensions to which the reinstatement provisions apply to previously described provisions of the bill that relocate those suspensions, and it makes a few technical changes in the provisions. (R.C. 4511.191(F) and 4511.19(G)(2).)

R.C. 4511.196 suspension

Existing law

OMVI or OMVUAC-related suspension. Under existing law, if a person is arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or both or for having a prohibited concentration of alcohol in the person's blood, breath, or urine, if the person's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under the Vehicle Implied Consent Law in relation to that arrest, if the person appeals the suspension in accordance with that Law (at the person's initial appearance), and if the judge, magistrate, or mayor terminates the suspension in accordance with that Law, the judge, magistrate, or mayor may impose a new suspension of the person's license, permit, or nonresident operating privilege, notwithstanding the termination, if the judge, magistrate, or mayor determines that *the person's continued driving will be a threat to public safety*. If a person is so arrested and the person's driver's or commercial driver's license or permit or nonresident operating privilege has not been suspended under the Vehicle Implied Consent Law in relation to that arrest, the judge, magistrate, or mayor may impose a suspension of the person's license, permit, or nonresident operating privilege if the judge, referee, or mayor determines that *the person's continued driving will be a threat to public safety*.

A suspension described under the preceding paragraph continues until the complaint on the charge resulting from the arrest is adjudicated on the merits. Any time during which the person serves the suspension is credited against any

judicial suspension of the person's license, permit, or nonresident operating privilege that is imposed as a result of the person's conviction of state OMVI or an equivalent municipal ordinance. (R.C. 4511.196(A) to (C).)

Vehicular homicide or vehicular assault-related suspension. Additionally, if a person is arrested and charged with aggravated vehicular homicide, felony vehicular homicide, aggravated vehicular assault, or vehicular assault, the judge at the person's initial appearance, preliminary hearing, or arraignment may suspend the person's driver's or commercial driver's license or permit or nonresident operating privilege if the judge determines that *the person's continued driving will be a threat to public safety*. A suspension imposed under this provision continues until the indictment or information alleging the violation that is the basis for the suspension is adjudicated on the merits. A court that imposes a suspension under this provision must send the person's license or permit to the Registrar. (R.C. 4511.196(D).)

Operation of the bill

The bill specifies that the R.C. 4511.196(A) to (C) suspensions apply in relation to a person arrested for state OVI, state OVUAC, a violation of a municipal OVI ordinance, or the new offense enacted in the bill of "having physical control of a vehicle while under the influence," as described below, and that a judge, magistrate, or mayor may impose the suspensions *at any time prior to the adjudication on the merits of the charge resulting from the subject person's arrest*. The bill also makes several changes to conform to other, previously described, changes it contains. It does not change the 4511.196(D) suspension. (R.C. 4511.196.)

New offense--"having physical control of a vehicle while under the influence"

The bill enacts a new offense named "having physical control of a vehicle while under the influence." It prohibits a person from being in "physical control" (see below) of a vehicle, streetcar, or trackless trolley while under the influence of alcohol, a drug of abuse, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified as being a prohibited concentration under the offense of state OVI under the bill. The offense is a misdemeanor of the first degree. In addition to all other sanctions imposed, the sentencing court is authorized to impose on the offender a Class 7 (definite period not to exceed one year) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. (R.C. 4511.194(B) and (C).)

For purposes of the new offense, the bill defines "physical control" as being in the driver's position of the front seat of a vehicle or in the driver's position of a

streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device. (R.C. 4511.194(A).)

The new offense is linked to the definition of "operate" that the bill enacts in R.C. 4511.01 and that, in relevant part, applies to the offenses of state OVI and state OVUAC under the bill. Under the bill, state OVI and state OVUAC prohibit a person from *operating* a vehicle, streetcar, or trackless trolley in specified circumstances. And under the bill's definition of "operate," a person must cause, or have caused, movement of the vehicle, streetcar, or trackless trolley on any public or private property used by the public for purposes of vehicular travel or parking. Thus, under the bill, if a person *does not cause, and has not caused, movement* of a vehicle, streetcar, or trackless trolley in the specified manner, the person has not committed state OVI or state OVUAC. However, if the person is in the driver's position of a stationary vehicle, streetcar, or trackless trolley and possesses the ignition device, the person might have committed the new offense of having physical control of a vehicle while under the influence. (R.C. 4511.01(HHH), 4511.19(A) and (B), and 4511.194.)

Offense of wrongful entrustment

Existing law

Existing law prohibits a person from authorizing or knowingly permitting a motor vehicle owned by the person or under the person's control to be driven by any person if either of the following applies: (1) the offender knows or has reasonable cause to believe the other person has no legal right to drive the motor vehicle, or (2) the offender knows or has reasonable cause to believe the other person's act of driving the motor vehicle would violate any prohibition contained in the state's Driver's License Law contained in R.C. Chapter 4507. (R.C. 4507.33.)

A violation of either of these prohibitions is the offense of "permitting the operation of a vehicle by a person with no legal right to operate a vehicle" and is punished as follows (R.C. 4507.99(E)):

(1) Except as otherwise provided in paragraph (2), it is a misdemeanor of the first degree. In addition to or independent of any other sentence it imposes upon the offender and subject to the existing "innocent owner" exception in R.C. 4503.235, the court must order the immobilization for 30 days of the vehicle involved in the offense and the impoundment for 30 days of its license plates. The order must be issued and enforced under R.C. 4503.233, as described above in "***Vehicle impoundment, immobilization, and forfeiture procedures***."

(2) If the offender one or more times previously has been convicted of the offense, it is a misdemeanor of the first degree. In addition to or independent of any other sentence it imposes upon the offender and subject to the existing innocent owner exception, the court must order the criminal forfeiture to the state of the vehicle involved in the offense. The order must be issued and enforced under R.C. 4503.233, as described above in "***Vehicle impoundment, immobilization, and forfeiture procedures***." If title to a motor vehicle that is subject to an order for criminal forfeiture under this provision is assigned or transferred, generally, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association. The proceeds from the fine are distributed under existing R.C. 4503.234(D)(4).

Existing law provides for the pretrial seizure and retention of a vehicle involved in a violation of existing R.C. 4507.33 if, upon conviction of the violation, the vehicle would be subject to an order of immobilization and impoundment or an order of criminal forfeiture to the state. The pretrial seizure and retention provisions are described above in "***Pretrial seizure and retention of vehicle involved in DUS or wrongful entrustment offense***." (R.C. 4507.38.)

Operation of the bill

The bill modifies the elements of and penalties for the offense currently named "permitting the operation of a vehicle by a person with no legal right to operate a vehicle," relocates the offense from R.C. 4507.33 to R.C. 4511.203, and renames the offense "wrongful entrustment of a motor vehicle."

Offense. Under the bill, the provision prohibits a person from permitting a motor vehicle "owned by the person" (see below) or under the person's control to be driven by another if any of the following apply: (1) the offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges, (2) the offender knows or has reasonable cause to believe that the other person's driver's or commercial driver's license or permit or nonresident operating privileges have been suspended or canceled under the Revised Code, (3) the offender knows or has reasonable cause to believe that the other person's act of driving the motor vehicle would violate any prohibition contained in the state's Financial Responsibility Law, or (4) the offender knows or has reasonable cause to believe that the other person's act of driving would be the offense of state OVI, state OVUAC, or a violation of any substantially equivalent municipal ordinance. Under the bill, for purposes of this offense, a vehicle is owned by a person if, at the time of the violation, the vehicle is registered in the person's name. (R.C. 4511.203(A) and (G).)

Prima facie evidence of offender's knowledge. The bill specifies that it is *prima facie* evidence that the offender knows or has reasonable cause to believe that the operator of the motor vehicle owned by the offender or under the offender's control is in any of the four categories described in the above-described prohibition if any of the following applies (R.C. 4511.203(B)): (1) regarding an operator allegedly in the category described in (1) or (3) of "***Offense***," the offender and the operator of the motor vehicle reside in the same household and are related by consanguinity or affinity, (2) regarding an operator allegedly in the category described in (2) of "***Offense***," the offender and the operator of the motor vehicle reside in the same household, and the offender knows or has reasonable cause to believe that the operator has been charged with or convicted of any violation of law or ordinance, or has committed any other act or omission, that would or could result in the suspension or cancellation of the operator's license, permit, or privilege, or (3) regarding an operator allegedly in the category described in (4) of "***Offense***," the offender and the operator of the motor vehicle occupied the motor vehicle together at the time of the offense.

Penalties. A violation of the above-described prohibition is the offense of "wrongful entrustment of a motor vehicle," a misdemeanor of the first degree. In addition to the penalties imposed under the Criminal Sentencing Law, the court must impose a Class 7 (definite period not to exceed one year) suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege. If the vehicle involved in the offense is registered in the offender's name, the court must order one the following (R.C. 4511.203(C)):

(1) Except as otherwise described below in (2) or (3), the court must order, for 30 days, the immobilization of the offender's vehicle and the impoundment of its license plates.

(2) If the offender previously has been convicted one time of wrongful entrustment or a violation of a substantially equivalent municipal ordinance, the court must order, for 60 days, the immobilization of the offender's vehicle and the impoundment of its license plates.

(3) If the offender previously has been convicted two or more times of wrongful entrustment or a violation of a substantially equivalent municipal ordinance, the court must order the criminal forfeiture to the state of the offender's vehicle. If title to a motor vehicle that is subject to an order for criminal forfeiture is assigned or transferred and R.C. 4503.234(B)(2) or (3) applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealer's Association. The proceeds from the fine are distributed in accordance with R.C. 4503.234(C)(2).

The immobilization and forfeiture orders must be issued and forced as described in "***Vehicle impoundment, immobilization, and forfeiture procedures***" (R.C. 4511.203(C)).

If a court orders the immobilization of a vehicle as described above, it cannot release the vehicle from the immobilization before the termination of the period of immobilization ordered unless it is presented with current proof of financial responsibility with respect to that vehicle (R.C. 4511.203(D)).

If a court orders the criminal forfeiture of a vehicle as described above, upon receipt of the order from the court, neither the Registrar nor any deputy registrar may accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the order. The period of denial is five years after the date the order is issued, unless, during that five-year period, the court with jurisdiction of the offense that resulted in the order terminates the forfeiture and notifies the Registrar of the termination. If the court terminates the forfeiture and notifies the Registrar, the Registrar must take all necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer the vehicle's registration. (R.C. 4511.203(E).)

Exclusion. The bill states that none of its provisions described above relative to the offense of wrongful entrustment apply to motor vehicle rental dealers or motor vehicle leasing dealers, as defined in R.C. 4549.65 (R.C. 4511.203(F)).

Pretrial seizure and retention of vehicle involved in the offense. The bill modifies some of the existing provisions that pertain to the pretrial seizure and retention of a vehicle involved in a wrongful entrustment violation and relocates the provisions from R.C. 4507.38 to R.C. 4510.41. The modified provisions are discussed in more detail above in "***Pretrial seizure and retention of a vehicle involved in DUS or wrongful entrustment offense***."

Conforming changes regarding wrongful entrustment. The bill modifies a few existing provisions, generally by changing cross-references or making other technical changes, to conform them to its changes described above relative to the offense of wrongful entrustment (R.C. 4503.233, 4503.234, 4507.164(E), and 4510.41).

Retention of related existing provision. An existing provision related to wrongful entrustment prohibits a person from permitting the operation of a motor vehicle upon any public or private property used by the public for purposes of vehicular travel or parking knowing the operator does not have a valid driver's license issued to the operator by the Registrar or a valid commercial driver's

license. A violation of this prohibition is a misdemeanor of the first degree. (R.C. 4507.02(A)(2) and 4507.99(H).)

The bill retains this existing prohibition and its penalty, but the penalty is relocated into the same section that contains the prohibition and both the prohibition and the penalty are relocated in a different division of that statute (R.C. 4507.02(A)(1)).

Vehicular homicide, vehicular assault, and involuntary manslaughter offenses

Classification of suspensions

The bill classifies the driver's or commercial driver's license or permit suspensions that existing law requires the sentencing judge to impose upon a person convicted of the offense of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, vehicular assault, and, when the offense is alcohol-related and vehicle-related, involuntary manslaughter. Under the bill:

(1) The suspension for a person convicted of aggravated vehicular homicide based on a state or municipal OVI violation is classified as a Class 1 suspension (lifetime); currently the court must permanently revoke the offender's license or permit (R.C. 2903.06(B)(1)(a) and 4510.02(A)(1)).

(2) The suspension for a person convicted of aggravated vehicular homicide based on recklessness is classified as a Class 2 (a definite period of three years to life) suspension; currently the suspension is for a definite period of three years to life (R.C. 2903.06(B)(1)(b) and 4510.02(A)(2)).

(3) The suspension for a person convicted of vehicular homicide is classified as a Class 4 (a definite period of one to five years) suspension or, if the offender previously was convicted of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or a traffic-related homicide, manslaughter, or assault offense, a Class 3 (a definite period of two to ten years) suspension; currently the suspension is for a definite period of one to five years on a first offense and a definite period of two to ten years on a subsequent offense (R.C. 2903.06(B)(2) and 4510.02(A)(3) and (4)).

(4) The suspension for a person convicted of vehicular manslaughter is classified as a Class 6 (a definite period of three months to two years) suspension or, if the offender previously was convicted of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or a traffic-related homicide, manslaughter, or assault offense, a Class 4 (a definite period of one to five years) suspension; currently the suspension is for a definite period of three months to two

years on a first offense and a definite period of one to five years on a subsequent offense (R.C. 2903.06(B)(3) and 4510.02(A)(4) and (6)).

(5) The suspension for a person convicted of aggravated vehicular assault is classified as a Class 3 (a definite period of two to ten years) suspension or, if the offender previously was convicted of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or a traffic-related homicide, manslaughter, or assault offense, a Class 2 (a definite period of three years to life) suspension; currently the suspension is for a definite period of two to ten years on a first offense and a definite period of three years to life on a subsequent offense (R.C. 2903.08(B)(1) and 4510.02(A)(2) and (3)).

(6) The suspension for a person convicted of vehicular assault is classified as a Class 4 (a definite period of one to five years) suspension or, if the offender previously was convicted of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or a traffic-related homicide, manslaughter, or assault offense, a Class 3 (a definite period of two to ten years) suspension; currently the suspension is for a definite period of one to five years on a first offense and a definite period of two to ten years on a subsequent offense (R.C. 2903.08(B)(2) and 4510.02(A)(3) and (4)).

(7) The suspension for a person convicted of involuntary manslaughter, when the offense is alcohol-related and vehicle-related in a specified manner, is classified as a Class 1 suspension (lifetime); currently the judge must permanently revoke the offender's license or permit (R.C. 2903.04(D) and 4510.02(A)(7)).

Retention of "hard suspensions"

Existing law specifies that when a judge imposes a mandatory license suspension of 30 days to three years upon a person convicted of any of a list of specified offenses, no judge may suspend the first 30 days of the suspension (R.C. 4507.16(I)). The list of offenses for which such a suspension must be imposed upon conviction includes any felony in the commission of which a motor vehicle was used (R.C. 4507.16(A)). Existing law also prohibits a judge or mayor from suspending the mandatory license revocation that existing law, in the circumstances described above in "***Classification of suspensions***," requires to be imposed upon a person convicted of aggravated vehicular homicide or involuntary manslaughter (R.C. 4507.16(I), 2903.04(D) and 2903.06(B)).

As described above in "***General judicial suspensions***," the bill generally retains the existing "hard suspension" provision described in the preceding paragraph for current 4507.16(A) judicial license suspensions. Under the bill (R.C. 4510.13(C)(3)): (1) no judge or mayor may suspend any Class 1 suspension, or any portion of any Class 1 suspension, required to be imposed upon

a person convicted of aggravated vehicular homicide or involuntary manslaughter (see "***Classification of suspensions***," above), and (2) no judge or mayor may suspend the first 30 days of any Class 2, Class 3, Class 4, Class 5, or Class 6 suspension imposed upon a person convicted of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, or vehicular assault (see "***Classification of suspensions***," above).

State watercraft OMVI

Existing law--offense and penalties

Existing R.C. 1547.11(A) and (B) prohibit a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on the waters of Ohio if any of the following applies (hereafter, a violation of any of the prohibitions is referred to as "state watercraft OMVI"):

(1) Regardless of the person's age, any of the following applies: (a) the person is under the influence of alcohol, a drug of abuse, or the combined influence of alcohol and a drug of abuse, (b) the person has a concentration of .10 of one per cent or more by weight of alcohol in the person's blood, (c) the person has a concentration of .14 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, or (d) the person has a concentration of .10 of one gram or more by weight of alcohol per 210 liters of the person's breath.

(2) The person is under 21 years of age and any of the following applies: (a) the person has a concentration of at least .02 of one per cent but less than .10 of one per cent or more by weight of alcohol in the person's blood, (b) the person has a concentration of at least .028 of one gram but less than .14 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, or (c) the person has a concentration of at least .02 of one gram but less than .10 of one gram or more by weight of alcohol per 210 liters of the person's breath.

State watercraft OMVI is a misdemeanor of the first degree, and the offender must be punished as follows (R.C. 1547.99(G)):

(1) Except as described in paragraph (2) or (3), the court must sentence the offender to a term of imprisonment of three consecutive days, may sentence the offender to a longer term of imprisonment authorized for misdemeanors of the first degree, and must impose a fine of not less than $150 nor more than $1,000. The court may suspend the mandatory three days of imprisonment in specified circumstances.

(2) If, within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of R.C. 1547.11, of a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device while under the influence of alcohol, a drug of abuse, or both, or a municipal ordinance relating to operating a watercraft or manipulating any water skis, aquaplane, or similar device with a prohibited concentration of alcohol in the blood, breath, or urine, or of a violation of R.C. 2903.06 (aggravated vehicular homicide and vehicular homicide) based on a state OMVI violation or 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, the court must sentence the offender to a term of imprisonment of ten consecutive days, may sentence the offender to a longer term of imprisonment authorized for a misdemeanor of the first degree, and must impose a fine of not less than $150 nor more than $1,000.

(3) If, within five years of the offense, the offender has been convicted of or pleaded guilty to more than one violation of a type specified in paragraph (2), above, the court must sentence the offender to a term of imprisonment of 30 consecutive days, may sentence the offender to a longer term of imprisonment of not more than one year, and must impose a fine of not less than $150 nor more than $1,000.

Operation of the bill--offense and penalties

The bill adds two additional prohibitions to the offense of state watercraft OMVI that will apply in addition to the existing prohibitions constituting the offense. One additional prohibition prohibits any person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on Ohio waters if at the time of the act the person has a concentration of .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*; the second additional prohibition prohibits a person under 21 years of age from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on Ohio waters if at the time of the act the person has a concentration of at least .03 of one per cent but less than .12 of one per cent or more by weight per unit volume of alcohol *in the person's blood serum or plasma*. Related to this change, it modifies the existing prohibitions against operating or being in physical control of a vessel underway or from manipulating any water skis, aquaplane, or similar device on Ohio waters while having a specified concentration of alcohol in the operator's blood to specify that the prohibitions pertain *only to whole blood* and are to be determined *per unit volume*. For all the existing prohibitions and the additional prohibitions it adds, the bill specifies that the determination of being "under the influence" or of having a "prohibited concentration of alcohol" is determined at the time of the person's operation or

control of the vessel or manipulation of the water skis, aquaplane, or similar device. (R.C. 1547.11(A) and (B).)

Regarding the penalties for state watercraft OMVI, the bill extends the "look back period" for determining the penalty from five years to six years. Thus, if any of the specified prior convictions occurs within six years of the state watercraft OMVI offense for which sentence is being imposed, the prior conviction will be considered in determining the offender's sentence. (R.C. 1547.99(G)(2) and (3).)

Taking of chemical tests under Watercraft Implied Consent Law, use of tests in a criminal or juvenile proceeding, qualified immunity, and reports as prima facie proof

Generally. The bill revises the existing procedures relative to the taking of a chemical test under the state's Watercraft Implied Consent Law (see below) and to the use of those tests in a court proceeding. Under the bill, when a person submits to a blood test under that Law, only a physician, a registered nurse, or a *qualified* technician, chemist, *or phlebotomist* may withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content of the *whole blood, blood, serum or blood plasma*. As under existing law, this limitation does not apply regarding breath or urine samples. A person authorized to withdraw blood under this provision may refuse to withdraw it if, in that person's opinion, the physical welfare of the person would be endangered by withdrawing the blood.

Under the bill, in any criminal prosecution or juvenile court proceeding for a state watercraft OMVI violation, or for an "equivalent violation" (see below), the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn, or specimen taken within two hours of the time of the alleged violation. For purposes of this provision, the related provisions discussed below, and the state's Watercraft Implied Consent Law, "equivalent violation" means a violation of a municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state watercraft OMVI under the bill. (R.C. 1547.11(D)(1) and (G)(1).)

Under the bill, in a criminal prosecution or juvenile court proceeding for a state watercraft OMVI violation, other than one that applies only in relation to a person under 21 years of age, or for a substantially equivalent violation, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentrations specified in the offense of state watercraft OMVI, other than the portion of that offense that applies only to persons under 21 years of age, that fact may be considered with other competent evidence in determining the

guilt or innocence of the defendant or in making an adjudication of the child. This provision does not limit or affect a criminal prosecution or juvenile court proceeding for a state watercraft OMVI violation under the portion of the offense that applies only to a person under 21 years of age or for a violation of a prohibition that is substantially equivalent to that portion of the offense (R.C. 1547.11(D)(2)).

Upon the request of the person who was tested, the results of the chemical test must be made available to the person or the person's attorney, immediately upon completion of the chemical analysis. The person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test, in addition to any administered at the request of a law enforcement officer. (R.C. 1547.11(D)(3).)

Qualified immunity. Existing law provides a qualified immunity from civil liability based upon assault and battery or any other cause of action other than malpractice for any of the above-described medical personnel who so withdraws blood and for any medical facility at which it is withdrawn. The bill extends the immunity to phlebotomists and specifies that the immunity is not available to any person covered by the provision if the person engages in willful or wanton misconduct. (R.C. 1547.11(F).)

Laboratory reports as prima facie evidence. The bill specifies that, in general, in any criminal prosecution or juvenile court proceeding for a state watercraft OMVI violation or for an equivalent violation, the court must admit as prima-facie evidence a laboratory report from any forensic laboratory certified by the Department of Health that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified below. The laboratory report must contain all of the following: (1) the signature, under oath, of any person who performed the analysis, (2) any findings as to the identity and quantity of alcohol, a drug of abuse, or a combination of them that was found, (3) a copy of a notarized statement by the laboratory director or a designee that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties, and (4) an outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the Department of Health. (R.C. 1547.11(E)(1).)

Notwithstanding any other provision of law regarding the admission of evidence, such a report is not admissible against the defendant or child to whom it

pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's or child's attorney or, if the defendant or child has no attorney, on the defendant or child.

Such a report is not prima facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant or child to whom the report pertains or the defendant's or child's attorney receives a copy of the report, the defendant or child or the defendant's or child's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice. (R.C. 1547.11(E).)

Watercraft Implied Consent Law--existing law

Existing law specifies that any person who operates a vessel or uses any water skis, aquaplane, or similar device upon Ohio waters is deemed to have given consent to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's blood, breath, or urine, if arrested for state watercraft OMVI. If specified procedures are complied with, and if a person is asked to submit to such a test and refuses, the person is prohibited from operating a vessel or using any water skis, aquaplane, or similar device, and is prohibited from registering any watercraft under Ohio law, for one year following the date of the alleged violation. If the person under arrest is the owner of the vessel involved in the alleged violation, the arresting law enforcement officer must seize the watercraft registration certificate and tags from the vessel and forward them to the Chief, and the person's registration privileges are suspended for one year following the date of the alleged violation. The law contains procedures for appealing a suspension so imposed. (R.C. 1547.111.)

Watercraft Implied Consent Law--operation of the bill

The bill modifies some of the provisions of the existing Watercraft Implied Consent Law, and simplifies some of the procedures that pertain to that Law.

General implied consent. Under the bill, any person who operates or is in physical control of a vessel or uses water skis, an aquaplane, or a similar device upon Ohio waters is deemed to have given consent to a chemical test or tests to determine the alcohol, drug, or alcohol and drug content of the person's whole blood, blood serum or plasma, breath, or urine, if arrested for the offense of state watercraft OMVI, as it exists under the bill, or for a substantially equivalent municipal ordinance. The tests under this provision must be administered at the direction of a law enforcement officer having reasonable grounds to believe the person was committing state watercraft OMVI or a violation of a substantially equivalent municipal ordinance. The officer's law enforcement agency must

designate which test or tests are to be administered. Any person who is dead or unconscious or who otherwise is in a condition rendering the person incapable of refusal is deemed to have consented as described above, and the test or tests generally may be administered. (R.C. 1547.111(A) and (B).)

Giving of advice by arresting officer. The bill provides that, when a person is arrested for state watercraft OMVI or a violation of a substantially equivalent municipal ordinance, the person must be given a specified type of advice regarding the consequences of refusing to submit to a requested test. The advice must be in a written form prescribed by the Chief of the Division of Watercraft and be shown and read to the person. One or more persons must witness the officer's reading of the form and certify to that fact by signing the form. (R.C. 1547.111(C).)

Effect of refusal of requested chemical test. If a person is arrested for state watercraft OMVI or a violation of a substantially equivalent municipal ordinance and the arresting law enforcement officer asks the person to submit to a chemical test or tests, if the officer advises the person of the consequences of the person's refusal as described above, and if the person refuses to submit to the test or tests, no chemical test is given. Upon receipt of a sworn statement from the arresting officer that the officer had reasonable grounds to believe that the person committed state watercraft OMVI or a violation of a substantially equivalent municipal ordinance and that the person refused to submit to the requested test, and upon receipt of the form certifying that the person was advised of the consequences of the refusal, the Chief of the Division of Watercraft must inform the person by written notice that the person is prohibited from operating or being in physical control of a vessel, from using any water skis, aquaplane, or similar device, and from registering any watercraft under law, for one year following the date of the alleged violation. The suspension of the operation, physical control, use and registration privileges continues for the entire one-year period, subject to review as described below.

If the person under arrest is the owner of the vessel involved in the alleged violation, the law enforcement officer who arrested the person must seize the watercraft registration certificate and tags from the vessel involved in the violation and forward them to the Chief. The Chief must retain the impounded registration certificate and tags, and must impound all other registration certificates and tags issued to the person, for a period of one year following the date of the alleged violation, subject to review as described below.

As under existing law, if the arrested person fails to surrender the registration certificate because it is not on the person of the arrested person or in the watercraft, the officer who made the arrest must order the person to surrender it within 24 hours to the officer or the law enforcement agency that employs the

officer. If the person fails to do so, the officer must notify the Chief of that fact in the statement the officer submits to the Chief.

Upon suspending a person's operation, physical control, use and registration privileges under this provision, the Chief must notify the person in writing, at the person's last known address, and inform the person that the person may petition for a hearing as described below. If a person whose privileges have been suspended petitions for a hearing or appeals any adverse decision, the suspension of privileges begins at the termination of any hearing or appeal unless the hearing or appeal results in a decision favorable to the person. (R.C. 1547.111(D) and (E).)

Appeal of suspension. As under existing law, any person who has been notified by the Chief that the person is prohibited from operating or being in physical control of a vessel or using any water skis, aquaplane, or similar device and from registering any watercraft, or who has had the registration certificate and tags of the person's watercraft impounded, within 20 days of the notification or impoundment, may file a petition in the municipal court, county court, or juvenile court, with jurisdiction over the place of the arrest, agreeing to pay the cost of the proceedings and alleging error in the action taken by the Chief or alleging one or more of the matters within the scope of the hearing (see below), or both. The petitioner must notify the Chief of the filing of the petition and send the Chief a copy of it.

Under the bill, the scope of the hearing is limited to the issues of whether the law enforcement officer had reasonable grounds to believe the petitioner was committing state watercraft OMVI as modified under the bill or violating a substantially equivalent municipal ordinance, whether the petitioner was placed under arrest, whether the petitioner refused to submit to the chemical test upon request of the officer, and whether the petitioner was advised of the consequences of the refusal. The bill does not change the existing hearing procedures or the existing reinstatement provisions, other than to include references to being in "physical control of" a vessel. (R.C. 1547.111(F) through (H).)

No person who has received written notice from the Chief that the person is prohibited from operating or being in physical control of a vessel, from using any water skis, aquaplane, or similar device, and from registering a watercraft, or who has had the registration certificate and tags of the person's watercraft impounded, as described above, may operate or be in physical control of a vessel or use any water skis, aquaplane, or similar device for a period of one year following the date of the person's alleged commission of state watercraft OMVI or alleged violation of a substantially equivalent municipal ordinance. As under existing law, a violation of this prohibition is a misdemeanor of the first degree. (R.C. 1547.111(I) and 1547.99(B).)

Changes in traffic offense-related arrest and bond laws

Issuance of a citation for a minor misdemeanor that requires the setting of security

Existing law provides that, if a law enforcement officer issues a citation to a person for a state or local minor misdemeanor motor vehicle operation or equipment offense or motor vehicle crime and the person who is issued the citation is an Ohio resident who does not have a current valid Ohio driver's or commercial driver's license or the person is a resident of a state that is not a member of the Nonresident Violator Compact (Ohio is a member), the officer must bring the person before the court with which the citation is required to be filed for the setting of a reasonable security by the court in accordance with applicable law (R.C. 2935.27(A)(2)).

The bill replaces this provision with a provision that specifies that, if a law enforcement officer issues a citation to a person for a state or local minor misdemeanor motor vehicle operation or equipment offense or motor vehicle crime and the person is an Ohio resident but does not have a current valid Ohio driver's or commercial driver's license or the person is a resident of a state that is not a member of the Nonresident Violator Compact, and if the court, by local rule, has prescribed a procedure for the setting of a reasonable security by the court in accordance with applicable existing law, security must be set in accordance with that local rule and that law. The bill specifies that a court by local rule may prescribe a procedure for the setting of reasonable security as described above. It also specifies that, as an alternative to the above-described procedure, a court by local rule may prescribe a procedure for the setting of a reasonable security by the person without the person appearing before the court. The court must give a person who has security set in either manner a receipt or other evidence of the deposit of the security. (R.C. 2935.27(A)(2) and (B).)

Penalty for failure to appear after release

Existing law. Existing law prohibits a person who is charged with a crime and is released on his or her own recognizance from failing to appear as required (R.C. 2937.29, not in the bill). A violation of that prohibition is the offense of "failure to appear." The penalty for the offense is as follows (R.C. 2937.99):

(1) If the release was in connection with a charge of the commission of a felony or pending appeal after conviction of a felony, the offense is a felony of the fourth degree.

(2) If the release was in connection with a charge of the commission of a misdemeanor or for appearance as a witness, the offense is a misdemeanor of the first degree.

These provisions do not apply to misdemeanors arising under R.C. Chapters 4501. (motor vehicles--general provisions), 4503. (motor vehicle registration), 4505. (motor vehicle certificates of title), 4507. (driver's licenses), 4509. (financial responsibility), 4511. (motor vehicle traffic code), 4513. (motor vehicle equipment laws), 4517. (motor vehicle dealers), 4549. (motor vehicle crimes), and 5577. (motor vehicle weight limits and maximum dimensions) or to related ordinance offenses. They do apply, however, to the offenses of state OMVI, failure to stop after an accident on a public road or highway, failure to stop after an accident on any public or private property other than public roads or highways, and ordinance offenses related to these three state offenses.

Operation of the bill. The bill retains the existing prohibition and the existing penalties, with a few technical changes, but expands the exceptions contained in existing law to also include a reference to new R.C. Chapter 4510. (driver's license suspension provisions), thereby making the failure to appear provisions inapplicable to violations of that chapter (R.C. 2937.99(D)).

Payment of certain BMV fees directly to the BMV instead of to a court

Existing law

Existing law permits a court to declare the forfeiture of a person's driver's or commercial driver's license under the following circumstances:

(1) The person is issued a citation for a minor misdemeanor traffic offense, and the person either fails to appear at the time and place specified in the citation, fails to sign the guilty plea and waiver of trial provision on the citation and pay the fine and costs either in person or by mail, or fails to comply with or satisfy any judgment of the court within the time allowed by the court (R.C. 2935.27(D)).

(2) The person is arrested for committing one of a number of specified traffic offenses, the person deposits his Ohio driver's or commercial driver's license with the arresting officer or the local court as bond, and fails to appear in court at the date and time set by the court or fails to satisfy the judgment of the court (R.C. 2937.221(A)).

(3) The person is charged with a state or municipal traffic offense that is a misdemeanor of the first, second, third, or fourth degree, and the person either fails to appear in court at the required time and place to answer the charge or pleads guilty to or is found guilty of the violation and fails within the time allowed

by the court to pay the fine imposed (current R.C. 4507.168(A), renumbered R.C. 4510.22(A)).

In all cases involving these provisions, the court informs the Registrar of the forfeiture, and the person cannot be granted a driver's or commercial driver's license until the court having jurisdiction of the offense that led to the forfeiture orders that the forfeiture be terminated. If the forfeiture is terminated, the court is required to charge and collect from the person a processing fee of $15 to cover the costs the BMV incurs in administering its duties relating to these provisions. The clerk of the court transmits all these processing fees to the existing State Bureau of Motor Vehicles Fund. (R.C. 2935.27(D), 2937.221(A), and renumbered 4510.22(A).)

Operation of the bill

The bill replaces the references to "forfeitures" with references to "suspensions" and requires the person whose license is reinstated to pay the processing fee to the Bureau of Motor Vehicles, rather than to the court (R.C. 2935.27(D), 2937.221(A), and 4510.22(A)).

Changes in the criminal conviction record sealing laws

Conviction record or bail forfeiture record sealing

Existing law. Current law generally permits a "first offender" (see below) to apply to the sentencing court if convicted in Ohio, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of the offender's conviction record. The application may be made at the expiration of three years after the offender's final discharge if convicted of a felony or one year after final discharge if convicted of a misdemeanor. Similarly, any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture generally may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case. The application may be filed at any time after the expiration of one year from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

The court sets a hearing date and notifies the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the hearing date but must specify in the objection the reasons for believing a denial of the application is justified. The court must direct its regular probation officer, a state probation officer, or the probation department of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.

If the court determines that the applicant is a first offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, and that the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain such records, and that the rehabilitation of an applicant who is a first offender has been attained to the satisfaction of the court, the court, with limited exceptions, must order all official records pertaining to the case sealed and generally all index references to the case deleted. In the case of bail forfeitures, the court must dismiss the charges in the case. The proceedings in the case are considered not to have occurred, and the conviction or bail forfeiture of the person who is the subject of the proceedings must be sealed, except that they may be inspected for certain specified law enforcement purposes and except that, upon conviction of a subsequent offense, a court may consider the sealed record of the prior conviction or bail forfeiture in determining the sentence or other appropriate disposition. (R.C. 2953.32(A) to (D), not in the bill.)

For purposes of these provisions, "first offender" means the following (R.C. 2953.31(A)):

> . . . anyone who has been convicted of an offense in this state or any other jurisdiction, and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction. When two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, they shall be counted as one conviction, provided that a court may decide as provided in division (C)(1)(a) of section 2953.32 of the Revised Code that it is not in the public interest for the two or three convictions to be counted as one conviction.

For purposes of this definition, and except as otherwise provided below or in the definition, a conviction for a minor misdemeanor, for a violation of any section in R.C. Chapter 4511. (motor vehicle traffic code), 4513. (motor vehicle equipment laws), or 4549. (motor vehicle crimes), or for a violation of a municipal

ordinance that is substantially similar to any section in those chapters, *is not a previous or subsequent conviction*. A conviction for a violation of certain specified traffic-related R.C. sections, however, *is* considered a previous or subsequent conviction. These sections are as follows: 4511.19 (state OMVI), 4511.192 (driving with a suspended license), 4511.251 (street racing), 4549.02 (failure to stop after an accident on a public road or highway), 4549.021 (failure to stop after an accident on any public or private property other than public roads or highways), 4549.03 (failure to stop after an accident involving damage to realty), 4549.042 (illegal sale or possession of a master key), 4549.07 (repealed in 1985), and 4549.41 to 4549.46 (offenses relating to motor vehicle odometers). In addition, a conviction for a violation of a municipal ordinance that is substantially similar to any of these sections also is considered a previous or subsequent conviction. (R.C. 2953.31(A).)

Operation of the bill. The bill provides that, for purposes of the definition of "first offender" and except as otherwise provided in that definition or below, a conviction for a minor misdemeanor as under current law, for a violation of any section in R.C. Chapter 4507. (driver's license law) or new R.C. Chapter 4510. (driver's license suspension provisions), for any violation of Chapters 4511., 4513., or 4549. as under existing law, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters, is not a previous or subsequent conviction, but that a felony violation of R.C. Title 45 is considered a previous or subsequent conviction. The bill also conforms the current list of traffic-related convictions that are to be considered a previous or subsequent conviction to the bill's relocation of some of those offenses, and corrects that list's reference to repealed R.C. 4549.07 to a reference to R.C. 4549.62, where the substance of the repealed provision was relocated in 1985. (R.C. 2953.31(A).)

Application of the criminal conviction record sealing laws

Current law provides that the criminal conviction record sealing laws do not apply to any of the following: (1) convictions when the offender is subject to a mandatory prison term, (2) convictions for certain sex offenses, (3) convictions for offenses contained in R.C. Chapter 4507. (the driver's license laws), 4511. (motor vehicle traffic code), or 4549. (motor vehicle crimes) or for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters, (4) convictions of an offense of violence that is a first degree misdemeanor or felony, other than riot and other than assault, inciting to violence, or inducing panic when it is a first degree misdemeanor, (5) convictions of an offense that is a misdemeanor of the first degree or a felony, in circumstances under which the victim was under 18, (6) convictions of a felony of the first or second degree, or (7) bail forfeitures in a traffic case as defined in Traffic Rule 2. The bill adds a reference to new R.C. Chapter 4510. (driver's license suspension

provisions) in the provision summarized in clause (2), thereby making the criminal conviction record sealing laws inapplicable to convictions under that Chapter. (R.C. 2953.36.)

Refiling of previously withdrawn application

On March 23, 2000, the offenses identified in clauses (4), (5), and (6) of the preceding paragraph were added to the list of offenses identified in that paragraph to which the criminal conviction records sealing laws do not apply. Prior to that date, the sealing under that law of records of conviction for the offenses so added was not automatically precluded. The bill enacts a provision in uncodified law that specifies that if, on or after March 31, 1999, a person filed an application in a court that requested the sealing of a conviction record under the criminal conviction record sealing laws, if at the time the application was filed, the provision described in the preceding paragraph did not make the criminal conviction record sealing laws inapplicable to the conviction that was the subject of the application, if the person withdrew the application prior to March 31, 2001, and if the person refiles an application in the appropriate court within 90 days after the bill's effective date that requests the sealing of the same conviction record under the criminal conviction records sealing laws, all of the following apply (Section 7):

(1) The provisions of R.C. 2953.36 that set forth the offenses identified in clauses (4), (5), and (6) of the preceding paragraph as being offenses to which the criminal conviction records sealing laws do not apply, as they have existed since March 23, 2000, do not apply regarding the application or the determination of whether it should be accepted or granted, and the court may accept and grant the application regardless of whether the conviction that is the subject of the application is a conviction to which any of those clauses, but for the operation of this provision, makes the criminal conviction records sealing laws inapplicable;

(2) Except as provided in the preceding paragraph, the provisions of the criminal conviction records sealing laws that are in effect at the time of the refiling of the application apply regarding the application and the determination of whether it should be granted.

The bill states that this provision of uncodified law expires one year after the bill's effective date. (Section 7.)

Motor Vehicle Code--General provisions, R.C. Chapter 4501.

Additional cross-references to new R.C. Chapter 4510.

The bill locates new and existing driver's license suspension provisions in new R.C. Chapter 4510. The bill adds a reference to this new Chapter to a number of existing sections that are located in or are relocated to R.C. Chapter 4501., which contains general motor vehicle provisions. The result is that either these amended sections apply to new R.C. Chapter 4510., or that new Chapter applies to the amended sections. These amended R.C. Chapter 4501. sections are as follows:

R.C. 4501.01. The introductory paragraph of the definition section, R.C. 4501.01, provides "As used in this chapter and Chapters 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code, and in the penal laws, except as otherwise provided . . . ." This provision is followed by the various definitions. A reference to new R.C. Chapter 4510. included by the bill makes these definitions applicable to that Chapter. (R.C. 4501.01.)

R.C. 4501.25. The existing State Bureau of Motor Vehicles Fund, created by this section, consists of all money the Registrar of Motor Vehicles collects, including taxes, fees, and fines levied, charged, or referred to in enumerated Revised Code chapters and sections. A reference to new R.C. Chapter 4510. included by the bill requires all fees and fines levied or charged by or referred to in that Chapter to be paid into the State Bureau of Motor Vehicles Fund. (R.C. 4501.25.)

R.C. 4501.37. Currently, this section provides that no court may reverse, suspend, or delay any order made by the Registrar, or enjoin, restrain, or interfere with the Registrar or a deputy registrar in the performance of official duties, except as provided in R.C. sections 4507.01 to 4507.39. The bill modifies the final portion of this sentence to read ". . . except as provided in this chapter and Chapter 4507. or 4510. of the Revised Code." (Current R.C. 4507.28, renumbered R.C. 4501.37.)

R.C. 4501.38. Currently, this section provides that upon the request of the Registrar, the prosecuting attorney of the county in which any proceedings are pending "shall aid in any investigation, prosecution, hearing, or trial had under sections 4507.01 to 4507.39, of the Revised Code" and must institute and prosecute these actions or proceedings for the enforcement of those sections, and for the punishment of all violations of those sections, as the Registrar directs. The bill modifies the middle portion of this sentence to read ". . . shall aid in any investigation, prosecution, hearing, or trial held under this chapter or Chapter 4506., 4507., 4510., or 4511. of the Revised Code . . . ." The bill thus makes this provision applicable also to any investigation, prosecution, hearing, or trial held

under new R.C. Chapter 4510., existing Chapter 4506., which contains the commercial drivers license laws, or existing Chapter 4511., which contains the motor vehicle traffic laws. (Current R.C. 4507.29, renumbered R.C. 4501.38.)

Relocation of certain R.C. sections to R.C. Chapter 4501.

The bill relocates a few current R.C. sections, without substantive change, to R.C. Chapter 4501. These relocations are as follows:

(1) Records and proceedings of the Registrar of Motor Vehicles (current R.C. 4507.25, renumbered R.C. 4501.34);

(2) Order of the Registrar may be reversed, vacated, or modified by a court of common pleas (current R.C. 4507.26, renumbered R.C. 4501.351);

(3) Proceeding to obtain the reversal, vacation, or modification of an order of the Registrar (current R.C. 4507.27, renumbered R.C. 4501.36).

Commercial Driver's License Law

Exemptions

Under existing law a commercial driver's license (CDL) generally is required to operate a commercial motor vehicle within this state. A "commercial motor vehicle" means any motor vehicle designed or used to transport persons or property that meets any of the following qualifications (R.C. 4506.01(E)):

(1) Any combination of vehicles with a combined gross vehicle weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of 10,000 pounds;

(2) Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more, or any such vehicle towing a vehicle having a gross vehicle weight rating that is not in excess of 10,000 pounds;

(3) Any single vehicle or combination of vehicles that is not a Class A or Class B vehicle, but that either is designed to transport 16 or more passengers including the driver, or is placarded for hazardous materials;

(4) Any school bus with a gross vehicle weight rating of less than 26,001 pounds that is designed to transport fewer than 16 passengers including the driver;

(5) Is transporting hazardous materials for which placarding is required by regulations adopted under the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C.A. 1801, as amended;

(6) Any single vehicle or combination of vehicles that is designed to be operated and to travel on a public street or highway and is considered by the Federal Highway Administration to be a commercial motor vehicle, including, but not limited to, a motorized crane, a vehicle whose function is to pump cement, a rig for drilling wells, and a portable crane.

Existing law provides a number of exemptions to the CDL requirement. A person is not required to have a CDL, and the other provisions of the CDL Law do not apply to a person, when engaged in the operation of any of the following (R.C. 4506.02(A)):

(1) A farm truck;

(2) Fire equipment for a fire department, volunteer or nonvolunteer fire company, fire district, or joint fire district;

(3) A public safety vehicle used to provide transportation or emergency medical service for ill or injured persons;

(4) A recreational vehicle;

(5) A commercial motor vehicle within the boundaries of an eligible unit of local government, if the person is employed by the eligible unit of local government and is operating the commercial motor vehicle for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, but only if either the employee who holds a CDL and ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle, or the employing eligible unit of local government determines that a snow or ice emergency exists that requires additional assistance;

(6) A vehicle owned by the Department of Defense and operated by any member or uniformed employee of the armed forces of the United States or their reserve components, including the Ohio National Guard. This exception does not apply to United States Reserve Technicians.

(7) A commercial motor vehicle that is operated for nonbusiness purposes. "Operated for nonbusiness purposes" means that the commercial motor vehicle is not used in commerce as that term is defined in 49 C.F.R. 383.5, as amended, and is not regulated by the Public Utilities Commission pursuant to Chapter 4919., 4921., or 4923. of the Revised Code.

The bill adds another exemption to the CDL requirement. Under the bill, nothing in the CDL Law applies to any person when engaged in the operation of a motor vehicle that is designed primarily for the transportation of goods and not persons, while that motor vehicle is being used for the occasional transportation of

personal property by individuals not for compensation and not in the furtherance of a commercial enterprise is not required to possess a CDL and the other provisions of the CDL Law do not apply to the person. (R.C. 4506.02(A)(8).)

Commercial Motor Vehicle Implied Consent Law

Existing law provides that any person who drives a commercial motor vehicle within Ohio is deemed to have given consent to a test or tests of the person's blood, breath, or urine for the purpose of determining the person's alcohol concentration or the presence of any controlled substance. The test may be administered at the direction of a peace officer having reasonable ground to stop or detain the person and, after investigating the circumstances surrounding the operation of the commercial motor vehicle, also having reasonable ground to believe the person was driving the commercial vehicle while having a measurable or detectable amount of alcohol or of a controlled substance in the person's blood, breath, or urine. Any such test must be given within two hours of the time of the alleged violation. The law requires that the peace officer warn the person of the consequences of a refusal, provides for the disqualification from commercial vehicle operation for a specified period of a person who refuses to submit to a requested test or submit to one and has a specified concentration of alcohol in his or her system, requires the test to be given in compliance with the provisions of the state OMVI Law, as discussed above, provides an immunity for the physician, registered nurse, or qualified technician or chemist who withdraws the person's blood and the hospital, first-aid station, or clinic at which it is withdrawn, permits the person to have an additional test administered by a physician, registered nurse, or qualified technician or chemist of the person's choosing, and provides other procedures regarding the disqualification. (R.C. 4506.17.)

The bill expands the existing provisions in three ways: (1) it expands the references to the types of tests contemplated under the law to refer to tests of a person's whole blood, blood serum, or blood plasma, instead of referring only to the person's blood (but see R.C. 4506.15, the CDL drunk-driving law, which is not similarly expanded), (2) it expands the provisions regarding the immunity provided to the specified persons who withdraw a person's blood under that Law and to the places at which the blood is withdrawn to also refer to "qualified phlebotomists" and "facilities" other than hospitals, first-aid stations, and clinics, (3) it expands the reference to the medical personnel who may perform additional tests for a tested person to also refer to "qualified phlebotomists." (R.C. 4506.17(A), (B), (F), and (G).)

Driver's license laws--R.C. Chapter 4507.

Additional cross-references to new R.C. Chapter 4510.

The bill locates new and existing driver's license suspension provisions in new R.C. Chapter 4510. The bill adds a reference to this new chapter to a number of existing sections located in R.C. Chapter 4507., which contains the driver's license laws. The result is that either these amended sections apply to new R.C. Chapter 4510. or that new Chapter applies to the amended sections. These amended R.C. Chapter 4507. sections are as follows:

R.C. 4507.08. Currently, this section contains a number of restrictions on the issuance of driver's licenses and temporary instruction permits. One provision prohibits a temporary instruction permit or driver's license from being issued to any person whose license has been suspended during the period for which the license was suspended, or to any person whose license has been revoked under R.C. Chapter 4507., until the expiration of one year after the license was revoked. The bill modifies this provision by prohibiting a temporary instruction permit or driver's license from being issued to any person whose license has been suspended during the period for which the license was suspended, or to any person whose license has been canceled under R.C. Chapter 4510. or any other R.C. provision, and by repealing the provision that extends the prohibition until one year after the "revocation" of the license. (R.C. 4507.08(B).)

Another existing provision in the section prohibits a temporary instruction permit or driver's license from being issued to any person whose commercial driver's license has been suspended under certain specified R.C. sections or under any other R.C. provision, during the period of the suspension. The bill modifies this provision by prohibiting a temporary instruction permit or driver's license from being issued to any person whose commercial driver's license has been suspended R.C. Chapter 4510. or any other R.C. provision, during the period of suspension. (R.C. 4507.08(C).)

R.C. 4507.15. Currently, this section provides that, for the purpose of enforcing R.C. sections 4507.01 to 4507.39, any court of record having criminal jurisdiction has county-wide jurisdiction within the county in which it is located to hear and determine cases arising under those sections. The actions must be commenced by the filing of an affidavit, and the right of trial by jury is preserved; indictments, however, are not required in misdemeanor cases arising under those sections. The Registrar is required to prepare and furnish blanks for the use of the court in making reports of the convictions and bond forfeitures.

The bill modifies this provision by providing that, for the purpose of enforcing R.C. Chapters 4507. and 4510., any court of record having criminal

jurisdiction has county-wide jurisdiction within the county in which it is located to hear and determine cases arising under those chapters. An action arising under these provisions must be commenced by the filing of an affidavit, and the right of trial by jury is preserved; indictments, however, are not required in misdemeanor cases arising under those chapters. The Registrar is required to prepare and furnish blanks for the use of the court in making reports of the convictions and bond forfeitures arising under those chapters. (R.C. 4507.15.)

Commercial driving training schools

Commercial driver training school licensing requirements

Existing law. Currently, a commercial driver training school cannot be established unless the school applies for and obtains a license from the Director of Public Safety in the manner and form the Director prescribes. In addition, any school that offers a driver training program for disabled persons must provide specially trained instructors for the driver training of disabled persons, and no school may operate a driver training program for disabled persons unless it has been licensed for that type of operation by the Director. No person may act as a specially trained instructor in a driver training program for disabled persons unless that person has been licensed by the Director. (R.C. 4508.03(A) and (B).)

The rules governing these schools must state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, previous records of the school and instructors, financial statements, schedule of fees and charges, character and reputation of the operators, and insurance. Financial responsibility information also is part of the driver education curriculum. (R.C. 4508.03(A).)

Operation of the bill. The bill retains the provisions of existing law and specifically prohibits any person from operating a driver training school unless the person has a valid license issued by the Director (R.C. 4508.03(E)). Whoever violates the prohibition is guilty of "operating a driver training school without a valid license," a minor misdemeanor on a first offense. On a second or subsequent offense within two years after the first offense, the offense is a misdemeanor of the fourth degree. (R.C. 4508.03(F).)

License required for instructors

Existing law. Under existing law, no person may act as a driver training instructor or act as a driver training instructor for disabled persons unless he applies for and obtains a license from the Director in the manner and form the Director prescribes. The Director must provide by rule for instructors' license requirements including moral character, physical condition, knowledge of the

courses of instruction, motor vehicle laws and safety principles, previous personal and employment records, and any other matters the Director prescribes for the protection of the public. Driver training instructors for the disabled must meet any additional requirements and receive any additional classroom and practical instruction as the Director prescribes by rule. (R.C. 4508.04.)

Operation of the bill. The bill retains the provisions of existing law and specifies that a person who violates the existing prohibition is guilty of "acting as a driver training instructor without a valid license," a misdemeanor of the fourth degree. (R.C. 4508.04(D)(1).)

The bill also prohibits a person from knowingly making a false statement on a driver training instructor license application. A person who violates this prohibition may be charged with the existing crime of falsification. (R.C. 4508.04(C) and (D)(2).)

The bill also prohibits any driver training instructor license from being issued to either of the following: (1) a person who, within ten years of the date of application for the license, has pleaded guilty to or been convicted of a felony under Ohio law or the comparable laws of another jurisdiction, or (2) a person who, within five years of the date of application for the license, has pleaded guilty to or been convicted of a misdemeanor of the first or second degree that is reasonably related to the person's fitness to be issued such a license (R.C. 4508.04(B)(1) and (2)).

Suspension or revocation of a license

Existing law permits the Director of Public Safety to refuse to issue, or to suspend or revoke, a driver training instructor license in any case where the Director finds the applicant or licensee has violated any provisions of the driver training school law or the regulations adopted for that law by the Director. The licensee must return the suspended or revoked license to the Director. (R.C. 4508.06.)

The bill modifies these provisions as follows:

(1) Under the bill, the Director may refuse to issue, or may suspend or revoke, a driver training instructor license in any case in which the Director finds the applicant or licensee has violated any of the provisions of the driver training school law or any of the Director's regulations for that law. The bill prohibits any person whose license has been so suspended or revoked from failing to return the license to the Director. (R.C. 4508.06(A).)

(2) A person who violates the prohibition described in (1) is guilty of "failing to return a suspended or revoked license," a minor misdemeanor on a first offense. On a second or subsequent offense within two years after the first offense, this offense is a misdemeanor of the fourth degree. (R.C. 4508.06(B).)

New prohibition relating to vehicles used by a driving school

The bill prohibits a person who operates a driver training school from using or causing to be used in the operation of the driving school and upon any public property or private property used for vehicular traffic any vehicle that does not meet the minimum standards that are established by the Director of Public Safety and that are applicable to vehicles used in the operation of a driving school. A person who violates this prohibition is guilty of "using an unsafe vehicle at a driving school," a minor misdemeanor or, on a second or subsequent offense within two years after the first offense, a misdemeanor of the fourth degree. (R.C. 4508.09(A) and (B).)

Changes in the penalties for the offense of speeding on a public street or highway

Existing law

Existing speed limits generally. Existing law prohibits any person from doing either of the following: (1) operating a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, or (2) driving any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead (R.C. 4511.21(A)).

It is prima facie lawful, in the absence of a lower limit declared by the Director of Transportation or a local authority, for the operator of a motor vehicle, trackless trolley, or streetcar to operate the vehicle at a speed not exceeding most of the speeds specified in the speed limit statute, and prima-facie unlawful to exceed any of these specified speed limits. These are known as prima-facie speed limits. (R.C. 4511.21(B) and (C).)

In contrast to the prima facie speed limits, existing law specifically prohibits any person from operating a motor vehicle, trackless trolley, or streetcar upon a street or highway, as follows (R.C. 4511.21(D)):

(1) At a speed exceeding 55 miles per hour, except upon a freeway as provided in existing law;

(2) At a speed exceeding 65 miles per hour upon a freeway as provided in existing law, except as otherwise provided for motor vehicles weighing in excess of 8,000 pounds empty weight or a noncommercial bus;

(3) If a motor vehicle weighing in excess of 8,000 pounds empty weight or a noncommercial bus, at a speed exceeding 55 miles per hour upon a freeway;

(4) At a speed exceeding the posted speed limit upon a freeway for which the Director has determined and declared a speed limit of not more than 65 miles per hour pursuant to a provision of existing law that permits the Director to do so;

(5) At a speed exceeding 65 miles per hour upon a freeway for which such a speed limit has been established through the operation of a provision of existing law that permits the establishment of such a speed limit;

(6) At a speed exceeding the posted speed limit upon a freeway for which the Director has determined and declared a speed limit pursuant to a provision of existing law that permits the Director to do so.

These six prohibitions will be referred to in the remaining portion of this analysis relating to speed limits as "absolute speed limit prohibitions."

Current speed limit penalties. The penalties for most state speeding violations currently are located in a "catch-all" penalty provision, which applies to a large number of traffic operation offenses. A first offense is punishable as a minor misdemeanor. If, within one year, the offender has been convicted of or pleaded guilty to one of the offenses to which the "catch-all" applies, or any substantially similar municipal ordinance, the offense is a misdemeanor of the fourth degree. And if, within one year, the offender has been convicted of or pleaded guilty to two or more of the offenses to which the "catch-all" applies, or two or more substantially similar municipal ordinances, the offense is a misdemeanor of the third degree. (R.C. 4511.99(D)(1).)

The catch-all provision does not apply to two particular speeding offenses. If a person is found guilty of a first offense that is a state speeding violation and the court finds that the person operated a motor vehicle faster than 35 miles an hour in a business district of a municipal corporation, faster than 50 miles an hour in other portions, or faster than 35 miles an hour while passing through a school zone during recess or while children are going to or leaving school during the opening or closing hours, the person is guilty of a misdemeanor of the fourth degree. (R.C. 4511.99(D)(2).) Upon a finding that a person operated a motor vehicle in a construction zone where warning signs were properly posted, the court, in addition to all other penalties provided by law, must impose a fine of two times the usual amount imposed for the violation, provided that a court cannot

impose such a fine upon an offender who alleges, in an affidavit filed with the court prior to his sentencing, that he is indigent and is unable to pay the fine and the court determines the offender is an indigent person and is unable to pay the fine. (R.C. 4511.99(D)(3).)

Points assessment for speeding under existing law. Under existing law, when a person pleads guilty to or is convicted of a state or local traffic law violation involving a moving motor vehicle, such as speeding, the Registrar of Motor Vehicles assesses a number of points against his driver's license. The assessments range from two points for less serious violations to six points for more serious violations. If a person accumulates 12 points within a two-year period, his or her driver's license is suspended for six months. These provisions are discussed in more detail in "***Repeat traffic offender license suspension (accumulation of points on driving record)***," above. (R.C. 4507.021.)

The current points schedule for speeding is based partly on the speed at which the offender was operating the motor vehicle at the time of the offense and partly on number of speeding offenses the offender has committed within one year of the current offense (R.C. 4507.021(G)(12) to (15)). In addition, points are assessed for a violation of one of the absolute speed limit prohibitions only when the court finds the violation involved a speed of five miles per hour or more in excess of the posted speed limit (R.C. 4511.21(G)).

Points are assessed for speeding offenses according to the following schedule:

(1) Except as otherwise provided, for a violation of any law or ordinance pertaining to speed ..... two points (R.C. 4507.021(G)(12)).

(2) For a first violation of a speed limit in violation of one of the absolute speed limit prohibitions at a speed in excess of 75 miles per hour..... two points R.C. 4507.021(G)(13)).

(3) For a second violation within one year of the first violation of a speed limit in violation of one of the absolute speed limit prohibitions, for each increment of five miles per hour in excess of the posted speed limit, exclusive of the first five miles per hour over the limitation..... one point (R.C. 4507.021(G)(14)).

(4) For a third or subsequent violation within one year of the first violation of a speed limit in violation of one of the absolute speed limit prohibitions, for each increment of five miles per hour in excess of the posted speed limit, exclusive of the first five miles per hour over the limitation..... two points (R.C. 4507.021(G)(15)).

Operation of the bill

Changes in the misdemeanor classification for some speeding offenses. The bill does not change any of the existing speed limits or any of the absolute speed limit prohibitions reviewed in the immediate preceding portion of this analysis. The bill relocates the speeding penalty provisions to the end of R.C. 4511.21 and changes the misdemeanor classification for some speeding offenses. (R.C. 4511.21(O).)

The bill specifies that except as otherwise described in this paragraph or the next paragraph, a state speeding offense is a minor misdemeanor. If, within one year of the offense, the offender has been convicted of or pleaded guilty to two state speeding violations or substantially similar municipal ordinance violations, the offense is a misdemeanor of the fourth degree. If, within one year of the offense, the offender has been convicted of or pleaded guilty to three or more state speeding violations or substantially similar municipal ordinance violations, the offense is a misdemeanor of the third degree. (R.C. 4511.21(O)(1).)

The bill relocates without substantive change the existing specific penalty provisions that apply to speeding by a specified amount in a business district or school zone, etc., or in a posted construction zone, as described above under "***Current speed limit penalties***" (R.C. 4511.21(O)(2) and (3)).

Speeding points assessment. As described above under "***Points assessed for traffic violations***," the bill modifies the points assessment schedule for state and municipal speeding offenses in the following manner (R.C. 4510.036(C)(11) and 4511.21(G)):

(1) Notwithstanding following items (2) and (3), when the speed exceeds the lawful speed limit by 30 miles per hour or more ..... four points;

(2) When the speed exceeds the lawful speed limit of 55 miles per hour or more by more than ten miles per hour ..... two points;

(3) When the speed exceeds the lawful speed limit of less than 55 miles per hour by more than five miles per hour ..... two points;

(4) When the speed does not exceed the amounts in items (1), (2), or (3), above ..... zero points.

The bill repeals the existing provision that specifies that, for a violation of one of the absolute speed limits, points are assessed only when the violation involved a speed of at least five miles per hour in excess of the posted speed (R.C. 4511.21(G)).

Changes in the penalties for the offense of speeding on a private road or driveway for which a speed limit has been established

Current law

Under current law, the owner of a private road or driveway located in a private residential area containing 20 or more dwelling units may establish a speed limit on the road or driveway by complying with all of the following requirements (R.C. 4511.211(A)):

(1) The speed limit is not less than 25 miles per hour and is indicated by a sign that is in a proper position, is sufficiently legible to be seen by an ordinarily observant person, and meets the specifications for the basic speed limit sign included in ODOT's manual and specifications for a uniform system of traffic control devices;

(2) The owner has posted a sign at the entrance of the private road or driveway that is in plain view and clearly informs persons entering the road or driveway that they are entering private property, a speed limit has been established for the road or driveway, and the speed limit is enforceable by law enforcement officers under state law.

No person may operate a vehicle upon a private road or driveway for which a speed limit has been properly established and posted under the above-described provisions at a speed exceeding that speed limit. When a speed limit for a private road or driveway is established and the required signs have been posted, any law enforcement officer may apprehend a person violating the speed limit of the residential area by utilizing any of the means described in existing law or by any other accepted method of determining the speed of a motor vehicle and may stop and charge the person with exceeding the speed limit. Points are assessed for a violation of such a properly established and posted speed limit in accordance with the current schedule but only when the violation involves a speed of five miles per hour or more in excess of the posted speed limit. (R.C. 4511.211(B), (C), and (D).)

The penalties for committing a speeding violation on such a private road or driveway are located in the "catch-all" penalty provision of existing law, as described above in "***Changes in the penalties for the offense of speeding on a public street or highway***" (R.C. 4511.99(D)(1)).

Operation of the bill

The bill retains the existing provisions regarding the prohibition against speeding on a private road or driveway but modifies the sanctions for a violation

of the prohibition. The bill specifies that, except as otherwise described below, the offense of speeding on a private road or driveway for which a speed limit has been properly established and posted is a minor misdemeanor. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to two such speeding violations or substantially similar municipal ordinance violations, the offense is a misdemeanor of the fourth degree. If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to three or more such speeding violations or substantially similar municipal ordinance violations, the offense is a misdemeanor of the third degree. (R.C. 4511.211(F).)

The bill repeals the existing provision that specifies that points are assessed only when the violation involves a speed of at least five miles per hour in excess of the posted speed limit. Under the bill, points for such speeding violations are assessed according to the new schedule contained in the bill and reviewed above in "***Speeding points assessment***" (R.C. 4510.036(C)(11) and 4511.211(D)).

Relocation of provision regarding prosecution to enforce Odometer Rollback and Disclosure Act

The bill enacts new R.C. 4549.52, which relocates a provision currently contained in R.C. 4549.99(C) and makes minor changes in that provision. This current provision permits the prosecuting attorney of the proper county or the Attorney General by information or complaint to bring a criminal action in the courts of common pleas of Ohio, or in any other court of competent jurisdiction, to enforce the Odometer Rollback and Disclosure Act, contained in R.C. 4549.41 to 4549.51. The Attorney General and the prosecuting attorney of the county in which a person who has been licensed or granted a permit under R.C. Chapter 4517. (which governs the licensing of motor vehicle dealers and salespersons) is convicted of or pleads guilty to a violation of R.C. 4549.41 to 4549.46 are required to report the conviction or guilty plea to the Registrar of Motor Vehicles within five business days.

The bill permits the prosecuting attorney of the county in which a violation of any provision of R.C. 4549.41 to 4549.51 occurs, or the Attorney General, to bring a criminal action to enforce the provisions of those sections. The Attorney General and the prosecuting attorney of the county in which a person who has been licensed or granted a permit under Chapter 4517. of the Revised Code is convicted of or pleads guilty to a violation of any provision of R.C. 4549.41 to 4549.46 is required to report the conviction or guilty plea to the Registrar within five business days of the conviction or plea. (New R.C. 4549.52, and repeal of R.C. 4549.99(C).)

Street racing

Existing law prohibits any person from participating in street racing upon any public road, street, or highway in this state (R.C. 4511.251(B)). "Street racing" is defined to mean the following (R.C. 4511.251(A)):

> the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other or the operation of one or more vehicles over a common selected course, from the same point to the same point, wherein timing is made of the participating vehicles involving competitive accelerations or speeds.

A person who commits street racing is guilty of a misdemeanor of the first degree (R.C. 4511.99(B)). The trial judge, in addition to or independent of all other penalties provided by law or ordinance, *must suspend* for not less than 30 days but not more than three years or must revoke 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 street racing (R.C. 4507.16(A)(1)).

The bill retains the current prohibition and the current penalty provision, but relocates the penalty provision to the end of the street racing section. The bill also relocates the license suspension language to provide that, in addition to any other sanctions, the court must suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege for not less than 30 days nor more than one year and that no judge may suspend the first 30 days of the suspension. (R.C. 4511.251(C) and 4510.02(A)(7), and repeal of R.C. 4507.16(A)(1) and 4511.99(B).)

Illegally passing a stopped school bus

Existing law requires the driver of a vehicle, streetcar, or trackless trolley upon meeting or overtaking from either direction any school bus stopped for the purpose of receiving or discharging any school child, person attending programs offered by community boards of mental health and county boards of mental retardation and developmental disabilities, or child attending a program offered by a Head Start agency, to stop at least ten feet from the front or rear of the school bus. The driver cannot proceed until the school bus resumes motion or the school bus driver signals for traffic to proceed. This "stopping" requirement does not apply to a driver on a highway that has four or more traffic lanes who approaches a stopped school bus from the opposite direction. (R.C. 4511.75(A).)

A person who violates this prohibition may be fined an amount not to exceed $500. A person who is issued a citation for such a violation cannot enter a written plea of guilty and waive his right to contest the citation in a trial, but instead must appear in person in the proper court to answer the charge. (R.C. 4511.99(G).) The trial judge or mayor of a mayor's court, in addition to all other penalties provided by law, may suspend for not more than one year the license of any person who is convicted of or pleads guilty to illegally passing a stopped school bus. When a driver's or commercial driver's license has been so suspended, the court or mayor must cause the person to deliver the license to the court, and the court or clerk of the court must forward the license to the Registrar of Motor Vehicles, together with notice of the action of the court. (R.C. 4507.165.)

The bill retains the current penalty provision for a violation of R.C. 4511.75(A) but relocates it to the end of the stopped school bus section (R.C. 4511.75(F)(1), and repeal of R.C. 4511.99(G)). The bill also relocates and modifies the license suspension provision to provide that in addition to and independent of any other penalty provided by law, the court or mayor may impose upon an offender a Class 7 suspension (a definite period not to exceed one year) of his or her driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in the bill for that class of suspension. The court or mayor still is required to cause the person to deliver the license to the court, and the court or clerk of the court must forward the license to the Registrar of Motor Vehicles, together with notice of the action of the court. (R.C. 4511.75(F)(2) and 4510.02(A)(7), and repeal of R.C. 4507.165.)

Failure to yield the right of way to a public safety vehicle or coroner's vehicle

Existing law

Existing law provides that, upon the approach of a public safety vehicle or coroner's vehicle, equipped with at least one flashing, rotating, or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and the driver is giving an audible signal by siren, exhaust whistle, or bell, no driver of any other vehicle shall fail to yield the right-of-way, immediately drive to a position parallel to, and as close as possible to, the right edge or curb of the highway clear of any intersection, and stop and remain in that position until the public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer.

Existing law also provides that, upon the approach of a public safety vehicle or coroner's vehicle, as stated in the preceding paragraph, no operator of any streetcar or trackless trolley shall fail to immediately stop the streetcar or trackless trolley clear of any intersection and keep it in that position until the

public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer.

The section states that it does not relieve the driver of a public safety vehicle or coroner's vehicle from the duty to drive with due regard for the safety of all persons and property upon the highway. It also states that it applies to a coroner's vehicle only when the vehicle is operated in accordance with R.C. 4513.171 and that, as used in its provisions, "coroner's vehicle" means a vehicle used by a coroner, deputy coroner, or coroner's investigator that is equipped with a flashing, oscillating, or rotating red or blue light and a siren, exhaust whistle, or bell capable of giving an audible signal.

A violation of either prohibition is a misdemeanor of the fourth degree on a first offense, a misdemeanor of the third degree on a second offense within one year of the first offense, and a misdemeanor of the second degree on each subsequent offense within one year of the first offense. (R.C. 4511.45 and 4511.99(M).)

Operation of the bill

The bill modifies the offense described above in the first paragraph under "***Existing law***" so that it applies only when the person in question fails to yield the right-of-way, and immediately drive to a position parallel to, and as close as possible to, the right edge or curb of the highway clear of any intersection *when it is practical to immediately drive to such a position*. Thus, under the bill, that offense provides that, upon the approach of a public safety vehicle or coroner's vehicle, equipped with at least one flashing, rotating or oscillating light visible under normal atmospheric conditions from a distance of 500 feet to the front of the vehicle and the driver is giving an audible signal by siren, exhaust whistle, or bell, no driver of any other vehicle shall fail to yield the right-of-way, immediately drive *if practical* to a position parallel to, and as close as possible to, the right edge or curb of the highway clear of any intersection, and stop and remain in that position until the public safety vehicle or coroner's vehicle has passed, except when otherwise directed by a police officer. The bill does not change the penalty for a violation of the prohibition or any other provision described above under "existing law" but relocates the penalty for a violation of either of the prohibitions from R.C. 4511.99 to R.C. 4511.45. (R.C. 4511.45(A)(1) and repeal of existing R.C. 4511.99(M).)

Changes in the penalties for illegally parking in "special parking locations"

Existing law

In general. Existing law requires that all political subdivisions and the state and all agencies and instrumentalities thereof, must provide and designate special parking locations and privileges for persons with disabilities that limit or impair the ability to walk (also known as handicapped parking spaces or disability parking spaces) at all offices and facilities where parking is provided, whether owned, rented, or leased, and at all publicly owned parking garages. The locations must be designated through the posting of an elevated sign, whether permanently affixed or movable, imprinted with the international symbol of access and must be reasonably close to exits, entrances, elevators, and ramps. If a new sign or a replacement sign designating a special parking location is posted, there also must be affixed upon the surface of that sign or affixed next to the designating sign a notice that states the fine applicable for the offense of parking a motor vehicle in the special designated parking location if the motor vehicle is not legally entitled to be parked in that location. (R.C. 4511.69(E).)

Prohibition and sanctions. Existing law prohibits a person from stopping, standing, or parking any motor vehicle at special parking locations provided as described in the preceding paragraph or at special clearly marked parking locations provided in or on privately owned parking lots, parking garages, or other parking areas and designated in accordance with the provision described in the preceding paragraph, unless: (1) the motor vehicle is being operated by or for the transport of a person with a disability that limits or impairs the ability to walk *and is displaying a valid removable windshield placard or special license plates*, or (2) the motor vehicle is being operated by or for the transport of a handicapped person *and is displaying a parking card or special handicapped license plates*.

Any motor vehicle that is parked in a special marked parking location in violation of this prohibition may be towed or otherwise removed from the parking location by the law enforcement agency of the political subdivision in which the parking location is located. A motor vehicle that is so towed or removed cannot be released to its owner until the owner presents proof of ownership and pays all towing and storage fees normally imposed by that political subdivision for towing and storing motor vehicles. If the motor vehicle is a leased vehicle, it cannot be released to the lessee until the lessee presents proof that that person is the lessee of the vehicle and pays all towing and storage fees normally imposed by that political subdivision for towing and storing motor vehicles.

If a person is charged with a violation of the prohibition, it is an affirmative defense to the charge that the person suffered an injury not more than 72 hours prior to the time the person was issued the ticket or citation and that, because of

the injury, the person meets at least one of the criteria contained in clause (1) or (2) of the second preceding paragraph.

Existing law specifies that a person who violates the prohibition is guilty of a misdemeanor and must be fined not less than $250 nor more than $500, but in no case may an offender be sentenced to any term of imprisonment. Arrest or conviction for a violation of the prohibition does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

Every fine collected under the provision described in the preceding paragraph must be paid by the clerk of the court to the political subdivision in which the violation occurred. Except as described in this paragraph, the political subdivision must use those fine moneys it receives to pay the expenses it incurs in complying with the signage and notice requirements described above under "***In general***." The political subdivision may use up to 50% of each such fine it receives to pay the costs of educational, advocacy, support, and assistive technology programs for persons with disabilities, and for public improvements within the political subdivision that benefit or assist persons with disabilities, if governmental agencies or nonprofit organizations offer the programs. (R.C. 4511.69(F) and 4511.99(P).)

Operation of the bill

The bill modifies the penalties for a violation of the prohibition set forth in R.C. 4511.69(F)(1), as described above, and relocates them in R.C. 4511.69(J)(2). Under the bill, except as otherwise described in this paragraph, a person who violates the prohibition is guilty of a misdemeanor and must be fined not less than $250 nor more than $500. But a person who violates the prohibition must be fined not more than $100 if the offender, prior to sentencing, proves either of the following: (1) that, at the time of the violation, the offender or the person for whose transport the motor vehicle was being operated had been issued a removable windshield placard that then was valid or special license plates that then were valid but the offender or the person neglected to display them as described in the prohibition, or (2) at the time of the violation, the offender or the person for whose transport the motor vehicle was being operated had been issued a parking card that then was valid or special handicapped license plates that then were valid but the offender or the person neglected to display them as described in the prohibition. As under existing law, in no case may an offender be sentenced to any term of imprisonment. The bill does not change any of the other existing provisions regarding sanctions for a violation of the prohibition. (R.C. 4511.69(J)(2).)

Prohibition against disguising or obscuring the color of restricted license plates

Existing law provides for the issuance and use in specified circumstances of "identification license plates" that are a different color from those regularly issued and that carry a special serial number that may be readily identified by law enforcement officers (currently, these plates often are called "family plates"). The bill retains these license plates and renames them as "restricted license plates." The bill also provides a few new uses of these license plates--one example in which restricted license plates are required under the bill is when a court grants a person limited driving privileges to a person convicted of state OVI, during the suspension imposed for the state OVI conviction (see "***Operation of the bill--penalties for state OMVI (renamed state OVI)***," above). Under existing law retained by the bill, the Registrar designates the color and serial number to be used on the restricted license plates, and they remain the same from year to year and cannot be displayed other than when ordered by the courts. The BMV is required to adopt rules providing for the decentralization of the issuance of restricted license plates, and the rules must provide for the issuance of the restricted license plates by at least one agency in each county. (R.C. 4503.231.)

The bill enacts a new provision that prohibits a person operating a motor vehicle displaying restricted license plates as described in the preceding paragraph from knowingly disguising or obscuring the color of the restricted plate. A violation of the prohibition is a minor misdemeanor. (R.C. 4503.231(A) and (C).)

Suspension of professional licenses for drug offenses: Admission to the bar

Under existing law, in addition to any prison term and any other sanction, a court that sentences a "professionally licensed person" who is convicted of or pleads guilty to various specific drug offenses is required to notify the regulatory entity that issued the person's "professional license" of the conviction. Existing law defines "professionally licensed person" as a person who holds any of 35 specified licenses or certificates issued by the state allowing the person to practice the profession (a person who has obtained a license as a manufacturer or wholesaler of controlled substances; a certified public accountant; an architect; a landscape architect; an auctioneer; a barber; a person licensed to engage in the business of a debt pooling company; various cosmetology professionals; a dentist; an embalmer or funeral director; a nurse; an optometrist; a pawnbroker; a precious metals dealer; a pharmacist; a physician assistant; a doctor; a psychologist; a registered engineer; a chiropractor; a real estate broker; a registered sanitarian; a junkyard operator; a motor vehicle salvage dealer; a steam engineer; a veterinarian; a hearing aid dealer; an investigator; a nursing home administrator; a speech-language pathologist; an occupational or physical therapist; a licensed counselor or social worker; a dietitian; a respiratory therapist; and a real estate appraiser). Existing law does not include a person who has been admitted to the

bar by order of the Supreme Court (attorneys) within the definition of "professionally licensed person," although it requires the notification of the Supreme Court for when a person admitted to the bar is convicted of any of the offenses in relation to which a professionally licensed person's regulatory entity must be notified of the person's conviction.

The bill adds a person who has been admitted to the bar by order of the Supreme Court in compliance with its prescribed and published rules to the list of 35 other licensed professionals defined as a "professionally licensed person" (R.C. 2925.01(W)(36)). Including a person who has been admitted to the bar by the Supreme Court in the list of professionally licensed persons allows the elimination of a separate reference to such persons (attorneys) in all of the following: R.C. 2923.01, 2925.02(D)(3), 2925.03(D)(3), 2925.04(D)(3), 2925.05(D)(3), 2925.06(D)(2), 2925.11(E)(3), 2925.12, 2925.13(D)(2), 2925.14, 2925.22(B)(2), 2925.23(G)(2), 2925.31, 2925.32, 2925.36(D)(2), 2925.37(L)(2), and 2925.38. Under existing law and the bill, the court is required to transmit a certified copy of the judgment entry of conviction for the specified drug offenses to the regulatory or licensing board or agency with authority to suspend or revoke the offender's professional license; in the case of a person admitted to the bar, the judgment entry is transmitted to the secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court and to either the Disciplinary Counsel or to officers of each certified grievance committee. The bill modifies existing law to require the transmittal "immediately" upon sentencing. (R.C. 2925.38, and the sections cited in the preceding sentence.)

Relocation of penalty clauses

Existing law

Under existing law, the provisions of R.C. Title XLV that contain prohibitions generally do not set forth the penalties for a violation of the prohibitions. Rather, the penalties generally are set forth in the last section of the R.C. Chapter that includes the prohibition, which is designated and referred to as the ".99" section.

For example, the penalties for a violation of any prohibition contained in the Motor Vehicle Licensing Law (R.C. Chapter 4503.) are set forth in R.C. 4503.99, those for a violation of any prohibition contained in the Certificate of Motor Vehicle Title Law (R.C. Chapter 4505.) are set forth in R.C. 4505.99, those for a violation of any prohibition contained in the Commercial Driver's Licensing Law (R.C. Chapter 4506.) are set forth in R.C. 4506.99, those for a violation of any prohibition contained in the Driver's License Law (R.C. Chapter 4507.) are set forth in R.C. 4507.99, those for a violation of any prohibition contained in the Driver Training School Law (R.C. Chapter 4508.) are set forth in R.C. 4508.99,

those for a violation of any prohibition contained in the Financial Responsibility Law (R.C. Chapter 4509.) are set forth in R.C. 4509.99, those for a violation of any prohibition contained in the Operation of a Motor Vehicle Law (R.C. Chapter 4511.) are set forth in R.C. 4511.99, those for a violation of any prohibition contained in the Vehicle Equipment and Load Law (R.C. Chapter 4513.) are set forth in R.C. 4513.99, those for a violation of any prohibition contained in the Motor Vehicle Dealer, Auction Owner, and Salesperson Law (R.C. Chapter 4517.) are set forth in R.C. 4517.99, those for a violation of any prohibition contained in the Special Vehicle Law (R.C. Chapter 4519.) are set forth in R.C. 4519.99, those for a violation of any prohibition contained in the Motor Vehicle Crimes Law (R.C. Chapter 4549.) are set forth in R.C. 4549.99, those for a violation of any prohibition contained in the Transportation of Christmas Trees Law (R.C. Chapter 4551.) are set forth in R.C. 4551.99, those for a violation of any prohibition contained in the Aeronautics Law (R.C. Chapter 4561.) are set forth in R.C. 4561.99, those for a violation of any prohibition contained in the Airport Law (R.C. Chapter 4563.) are set forth in R.C. 4563.99, those for a violation of any prohibition contained in the Port Authority Law (R.C. Chapter 4582.) are set forth in R.C. 4582.99, and those for a violation of any prohibition contained in the Ferry Law (R.C. Chapter 4583.) are set forth in R.C. 4583.99.

Operation of the bill

The bill generally relocates the penalty provisions for all violations of any prohibition contained in R.C. Title XLV from the applicable ".99" section to the section that actually sets forth the prohibition in question, and accordingly, generally repeals the ".99" sections. For a few chapters contained in R.C. Title XLV, though, the bill retains a "catch-all" penalty provision in the ".99" section--this ensures that, for certain provisions contained in those chapters that do not clearly contain prohibitions but that might be construed as containing prohibitions, the existing penalties are retained. Some of the relocated penalty provisions are modified, in addition to being relocated--those provisions are discussed in preceding portions of this analysis. But in all other cases, the bill does not change the relocated penalty provisions. The relocated penalty provisions that are not modified by the bill are as follows:

(1) The penalties for a violation of any Motor Vehicle Licensing Law prohibition are relocated to R.C. 4503.033, 4503.05, 4503.061, 4503.066, 4503.11, 4503.12, 4503.182, 4503.19, 4503.21, 4503.236, 4503.28, 4503.30, 4503.301, 4503.32, 4503.34, 4503.44, 4503.46, 4503.47, and 4503.471, and section 4503.99 is repealed (Section 2).

(2) The penalties for a violation of any Certificate of Motor Vehicle Title Law prohibition are relocated to R.C. 4505.101, 4505.102, 4505.11, 4505.111,

4505.15, 4505.17, 4505.18, 4505.19, 4505.20, and 4505.21, except that a "catch-all" penalty provision is retained in R.C. 4505.99.

(3) The penalties for a violation of any Commercial Driver's Licensing Law prohibition are relocated to R.C. 4506.03, 4506.04, 4506.05, 4506.06, 4506.10, 4506.11, 4506.12, 4506.14, 4506.15, 4506.17, 4506.18, 4506.19, and 4506.20, except that a "catch-all" penalty provision is retained in R.C. 4506.99.

(4) The penalties for a violation of any Driver's License Law prohibition are relocated to R.C. 4507.05, 4507.071, 4507.13, 4507.21, 4507.30, 4507.31, 4507.321, 4507.35, 4507.36, and 4507.52, except that a "catch-all" penalty provision and a provision regarding proof of financial responsibility in certain circumstances are retained in R.C. 4507.99.

(5) The penalties for a violation of any Commercial Driver Training School prohibition are relocated to R.C. 4508.03, 4508.04, and 4508.06, when the bill establishes specific prohibitions related to that law, and 4508.99 is repealed (Sec. 2).

(6) The penalties for a violation of any Financial Responsibility Law prohibition are relocated to R.C. 4509.74, 4509.77, 4509.78, 4509.79, and 4509.80, and R.C. 4509.99 is repealed (Sec. 2).

(7) The penalties for a violation of any Operation of a Motor Vehicle Law prohibition are relocated to R.C. 4511.03, 4511.051, 4511.11, 4511.12, 4511.132, 4511.16, 4511.17, 4511.18, 4511.20, 4511.201, 4511.202, 4511.213, 4511.22, 4511.23, 4511.25, 4511.251, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.45, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.51, 4511.511, 4511.521, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.62, 4511.63, 4511.64, 4511.66, 4511.661, 4511.68, 4511.681, 4511.69(J)(1) and (3) regarding a violation of R.C. 4511.69(A), (C), or (H), 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.74, 4511.75, 4511.76, 4511.761, 4511.762, 4511.763, 4511.764, 4511.77, 4511.771, 4511.772, 4511.78, 4511.79, 4511.81, 4511.82, 4511.84, and 4511.85, except that a "catch-all" penalty provision is retained in R.C. 4511.99; also see R.C. 4511.01(III); note that R.C. 4511.761(C), 4511.762(D), and 4511.77(C) contain a provision relocated, without change, from existing R.C. 4511.99(E), and that the penalties for a violation of R.C. 4511.69(F) are relocated to R.C. 4511.69(J)(2) and also are substantively changed as described above.

(8) The penalties for a violation of any Vehicle Equipment and Load Law prohibition are relocated to R.C. 4513.02, 4513.021, 4513.03, 4513.04, 4513.05, 4513.06, 4513.07, 4513.071, 4513.09, 4513.10, 4513.11, 4513.111, 4513.12, 4513.13, 4513.14, 4513.15, 4513.16, 4513.17, 4513.171, 4513.18, 4513.182, 4513.19, 4513.20, 4513.201, 4513.202, 4513.21, 4513.22, 4513.23, 4513.24, 4513.241, 4513.242, 4513.25, 4513.26, 4513.261, 4513.262, 4513.263, 4513.27, 4513.28, 4513.29, 4513.30, 4513.31, 4513.32, 4513.34, 4513.36, 4513.361, 4513.51, 4513.60, 4513.64, 4513.65, and 4513.99(A) and (B), except that a "catch-all" penalty provision also is retained in R.C. 4513.99(B).

(9) The penalties for a violation of any Motor Vehicle Dealer, Auction Owner, and Salesperson Law prohibition are relocated to R.C. 4517.02, 4517.03, 4517.19, 4517.20, 4517.21, 4517.22, 4517.23, 4517.24, 4517.25, 4517.26, 4517.27, 4517.40, 4517.41, 4517.42, 4517.43, 4517.44, 4517.45, and 4517.64, except that a "catch-all" penalty provision is retained in R.C. 4517.99.

(10) The penalties for a violation of any Special Vehicle Law prohibition are relocated to R.C. 4519.02, 4519.05, 4519.06, 4519.20, 4519.22, 4519.40, 4519.44, 4519.45, 4519.52, 4519.66, and 4519.67, and R.C. 4519.99 is repealed (Sec. 2).

(11) The penalty for a violation of any Motor Vehicle Crimes Law prohibition is relocated to R.C. 4549.01, 4549.02, 4549.021, 4549.03, 4549.08, 4549.10, 4549.11, 4549.12, 4549.18, 4549.43, 4549.44, 4549.45, 4549.451, 4549.46, and 4549.62, and R.C. 4549.99 is repealed (Sec. 2); also, certain provisions of R.C. 4549.99(C) pertaining to prosecutions of violations are relocated, without major substantive change, to R.C. 4549.52. The bill also relocates the penalties for a violation of R.C. 4549.042, pertaining to the sale, disposition, purchase, receipt, or possession of a motor vehicle master key, and R.C. 4549.42, pertaining to tampering with a vehicle odometer, to those sections and revises the penalties in accordance with the felony classification schedule enacted in Am. Sub. S.B. 2 of the 121st General Assembly (R.C. 4549.042 and 4549.42). Currently, those offenses are felonies of the fourth degree on a first offense and felonies of the third degree on a second or subsequent offense; the bill reclassifies them as felonies of the fifth degree on a first offense and felonies of the fourth degree on a second or subsequent offense. The Ohio Criminal Sentencing Commission indicated that this reclassification should have been done in that act but was omitted due to an oversight. The bill does not make similar changes in R.C. 4549.43, 4549.44, 4549.45, 4549.451, and 4549.46, which also pertain to vehicle odometer fraud activities and which are classified under both existing law and the bill as felonies of the fourth degree on a first offense and felonies of the third degree on a second or subsequent offense.

(12) The penalty for a violation of any Transportation of Christmas Trees Law prohibition is relocated to R.C. 4551.04, and R.C. 4551.99 is repealed (Sec. 2).

(13) The penalties for a violation of any Aeronautics Law prohibition are relocated to R.C. 4561.11, 4561.12, 4561.14, 4561.15, 4561.22, 4561.24, and 4561.31, except that a "catch-all" penalty provision is retained in R.C. 4561.99.

(14) The penalty for a violation of any Airport Law prohibition is relocated to R.C. 4563.20, and R.C. 4563.99 is repealed (Sec. 2).

(15) The penalties for a violation of any Port Authority Law prohibition are relocated to R.C. 4582.06 and 4582.31, and R.C. 4582.99 is repealed (Sec. 2).

(16) The penalty for a violation of any Ferry Law prohibition is relocated to R.C. 4583.01, and R.C. 4583.99 is repealed (Sec. 2).

Cross-references; relocation

The following sections are included in the bill to conform statutory references within the sections to changes made by the bill to other Revised Code sections or to be relocated; the sections may have other technical, conforming, or clarifying changes, but no major substantive changes are made to the following Revised Code sections: 9.981, 733.40, 1901.31, 1905.01, 1907.20, 2151.312, 2151.34, 2743.191, 2929.41, 2935.03, 2937.99, 2953.36, 3123.614, 4501.19, 4501.25, 4503.10, 4503.102, 4503.12, 4503.19, 4506.16, 4507.12, 4507.15, 4507.164, 4509.02, 4510.161, 4510.61 to 4510.72, 4511.751, 4513.022, 4519.41, 4563.09, 4563.10, 4582.59, and 5503.22.

The bill also includes a few sections that contain substantive changes in some divisions of the section, and technical, conforming, or clarifying changes in other divisions of the section that are unrelated to the substantive changes and that are not otherwise discussed in this analysis. The substantive changes contained in those sections are discussed in prior portions of this analysis. The divisions of those sections that contain only technical, conforming, or clarifying changes that are unrelated to the substantive changes and that are not otherwise discussed in this analysis are: 119.062(A), 1905.01(C), 2152.21(C), 2929.23(B)(1), 2929.41(B)(3), 2935.03(C) and (D), 2951.02(G)(1) and (2), 4507.02(B), 4507.08(D)(5), 4507.164(C), (D), (E), and (G), 4507.35(A), 4509.101(A)(6), (D)(1)(b), and (D)(6), 4509.291(A), and 4509.45(A).

Effective date and prospective application

The bill specifies that all of its provisions described above will take effect on January 1, 2004. It also specifies that, notwithstanding existing R.C. 1.58(B),

all of its provisions described above apply only in relation to conduct and offenses committed on or after January 1, 2003. Conduct and offenses committed prior to that date will be governed by the law in effect on the date the conduct or offense was committed. (Sections 4 and 5.)

Existing R.C. 1.58(B), not in the bill, states that:

> (I)f the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

Materials for training

The bill specifies that, from any amount appropriated to the Attorney General specifically for this purpose or from any other funds available to the Attorney General that could be used for this purpose, the Attorney General must develop, print, and distribute, in conjunction with the Department of Public Safety and the Ohio Criminal Sentencing Commission, training materials for the Department of Public Safety, law enforcement, and other appropriate persons for the implementation of the bill (Section 6).

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	06-05-01	pp.	614-616
Reported, S. Judiciary on Criminal Justice	09-20-01	p.	897
Recommitted to S. Judiciary on Criminal Justice	02-19-02	pp.	1474-1475
Re-reported, S. Judiciary on Criminal Justice	02-20-02	p.	1486
Passed Senate (33-0)	02-27-02	pp.	1524-1527

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