Diana C. Fox *Legislative Service Commission*

H.B. 324

125th General Assembly
(As Introduced)

Rep. Oelslager

BILL SUMMARY

The bill modifies and corrects errors in the Ohio Criminal Sentencing Commission's traffic law revisions act (Am. Sub. S.B. 123 of the 124th General Assembly) as follows:

- Changes the prohibited concentration of alcohol in the person's blood serum or plasma from .96% or more by weight per unit volume to .096% or more by weight per unit volume of alcohol in the state watercraft OVI and OVUAC law.

- Removes the term "motor" from the vehicular homicide and vehicular assault offenses so that both vehicular homicide and vehicular assault may be committed by a person operating or participating in the operation of a vehicle (instead of a "motor vehicle"), motorcycle, snowmobile, locomotive, watercraft, or aircraft.

- Reduces the mandatory suspension for the offense of failure to comply with an order or signal of a police officer from a Class 2 to a Class 6 (a definite period between three months and two years) when the offense is committed by a person who fails to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic but maintains existing law's Class 2 suspension requirement when the offense is committed by a person who operates a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.

- Clarifies that when a court imposes a prison sentence for a felony OVI offense, the court may also sentence the offender to community control sanctions.

- Permits instead of requires a court to impound the identification license plates of any motor vehicle registered in the name of a person convicted of driving under suspension or in violation of a license restriction in violation of R.C. 4510.11, driving under an OVI suspension in violation of R.C. 4510.14, driving under a financial responsibility (FR) suspension or cancellation in violation of R.C. 4510.16, failure to reinstate a license in violation of R.C. 4510.21, or if R.C. 4507.164(F) applies instead of Am. Sub. S.B. 123's requirement of mandatory impoundment of identification license plates.

- Specifies that if a court is permitted to grant limited driving privileges during a BMV suspension, the person under suspension may file a petition in a court of record in the county in which the person resides. If a person is not a resident of Ohio, the person may file a petition either in the Franklin county municipal court or in the municipal or county court located in the county where the offense occurred. If the person who is not an Ohio resident is a minor, the person may file a petition either in the Franklin county juvenile court or in the juvenile court with jurisdiction over the offense.

- Changes Am. Sub. S.B. 123's mandatory imposition of a Class 7 suspension for driving under suspension or in violation of a license restriction in violation of R.C. 4510.11, operating a motor vehicle without a valid license in violation of R.C. 4510.12, driving under financial responsibility law suspension or cancellation in violation of R.C. 4510.16, and wrongful entrustment of a motor vehicle in violation of R.C. 4511.203 to a permissive imposition.

- Modifies the penalty for the offense of operating a motor vehicle without a valid license so that if a trier of fact finds that an offender never has held a valid driver's or commercial driver's license issued in Ohio or another jurisdiction the offense is a misdemeanor of the first degree.

- Eliminates the requirement that a court must require a person to display restricted license plates as a condition of granting limited driving privileges when a license has been suspended for state or municipal OVI if the person previously has not been convicted of or pleaded guilty to prior violations of state OVI within the previous six years and has been convicted of or pleaded guilty to felony state OVI any time previously.

- Allows a court to impose a Class 5 suspension upon any person found guilty of operating a motor vehicle in violation of an Ohio law or a municipal ordinance relating to reckless operation.

- Establishes a look-back period of five years during which courts must enhance the penalties for persons who are guilty of driving under financial responsibility law suspension or cancellation and who have previously been convicted of or pleaded guilty to driving under a financial responsibility law suspension or cancellation.

- Expands the authorization to petition for limited driving privileges to an Ohio resident (including a juvenile) who is convicted of or pleads guilty to a statute of another state or federal statute that is substantially similar to any drug offense prohibited by R.C. 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.14, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 and whose license, permit, or privilege has been suspended by the Registrar (a Class D suspension, a definite period of six months).

- Clarifies that "any electrical personal assistive mobility device" is excluded from the definition of a vehicle for purposes of the Traffic Law (R.C. Chapters 4511. and 4513.).

- Modifies the definition of "operate" so that operate means to cause or have caused movement of a vehicle, streetcar, or trackless trolley, instead of the current definition which is 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.

- When a person pleads guilty to or is convicted of street racing, requires a court, in addition to any other sanctions, to 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 or more than three years, instead of the current suspension requirement of not less than 30 days or more than one year.

- Eliminates the requirement that a person filing a motion with the sentencing court for modification or termination of a Class 1 suspension (a definite period of life) or a Class 2 suspension when the period of suspension is in excess of 15 years (a Class 2 suspension can be a definite period of between three years and life) demonstrate that at least 15 years

have elapsed since the suspension began and specifies that a court may deny a motion without a hearing but cannot grant such a motion without a hearing, that, if the court denies a motion without a hearing, the person may file a subsequent motion for modification or termination of such a suspension, and that, if a court denies such a motion after a hearing, the court is barred from considering subsequent motions for that same person.

- Continuing law requires an arresting law enforcement officer to suspend the license, permit, or privilege of a person who refuses to take a chemical test of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug, or alcohol and drug content of the person's whole blood, blood serum or plasma, breath, or urine if that person is arrested for state OVI or OVUAC, having physical control of a vehicle while under the influence in violation of R.C. 4511.194 or a substantially equivalent municipal ordinance, or municipal OVI. (R.C. 4511.191(B)(1).) Additionally, an arresting law enforcement officer must suspend the license, permit, or privilege of a person who is arrested for state OVI or OVUAC, having physical control of a vehicle while under the influence in violation of R.C. 4511.194 or a substantially equivalent municipal ordinance, or municipal OVI if the person submits to a chemical test and the results of that test indicate a prohibited level of alcohol. (R.C. 4511.191(C)(1).) The Registrar of the BMV is then required to enter the suspension and the period of the suspension in the Registrar's records. Am. Sub. S.B. 123 specified that the Registrar is required to terminate the ALS suspension of the offender's license, permit, or privilege upon receiving notice that the person has entered a guilty plea or has been convicted of state OVI or OVUAC or municipal OVI on the basis of the facts that led to the arresting officer's suspension. Modifies when the Registrar is required to terminate an ALS suspension for state or municipal OVI or OVUAC so that the Registrar is required to terminate a suspension upon receipt of notice that the person has entered a guilty plea to or that person has been convicted after entering a plea of no contest under Criminal Rule 11 to state OVI or OVUAC or municipal OVI.

- Adds three exceptions to the prospective nature of changes made by Am. Sub. S.B. 123 and the bill so that, under the bill, the following apply to conduct or an offense committed prior to January 1, 2004: (1) a person whose driver's or commercial driver's license, temporary instruction

permit, probationary license, or nonresident operating privilege was suspended by a court may apply to the sentencing court for limited driving privileges pursuant to R.C. 4510.021(A), (2) a person whose license, permit, or privilege was suspended by the Registrar of Motor Vehicles may apply for limited driving privileges under R.C. 4510.021(B) if limited driving privileges are expressly authorized by a section of the Revised Code for the type of conduct or offense that caused the suspension, and (3) a person whose license, permit or privilege was suspended, canceled, or revoked for life may file a motion for modification or termination of the suspension, cancellation, or revocation in accordance with R.C. 4510.54. Finally, the bill requires that the terms and conditions of any limited driving privileges granted under these three provisions are to be governed by the law in effect on and after January 1, 2004.

- Specifies in several sections that a reference to R.C. 4511.194, which is the offense of having physical control of a vehicle while under the influence, also includes reference to a substantially equivalent municipal ordinance.

- Removes references to "special" license plates in favor of the term "restricted" license plates.

- Declares an emergency and specifies that the bill's changes are effective January 1, 2004, the same day as Am. Sub. S.B. 123 of the 124th General Assembly.

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CONTENT AND OPERATION

Overview

Am. Sub. S.B. 123 of the 124th General Assembly enacted numerous traffic law revisions that were recommended by the Ohio Criminal Sentencing Commission and that are effective January 1, 2004. The bill modifies some of the provisions contained in Am. Sub. S.B. 123 and corrects several errors. In order to insure that the provisions of Am. Sub. S.B. 123 and the bill are effective on the same date, the bill declares an emergency and specifies that its changes are also effective on January 1, 2004.

State watercraft OVI and OVUAC

Existing law

Current law prohibits a person from operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters if at the time of the operation, control, or manipulation, one of the following applies (state watercraft OVI--R.C. 1547.11(A)):

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person has a blood alcohol concentration of .08% or more in the person's whole blood.

(3) The person has a concentration of .96% or more by weight per unit volume of alcohol in the person's blood serum or plasma.

(4) The person has a concentration of .11 grams or more by weight of alcohol per 100 milliliters in the person's urine.

(5) The person has a concentration of .08 grams or more by weight of alcohol per 210 liters of the person's breath.

Additionally, current law 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 operation, control, or manipulation, one of the following applies (state watercraft OVUAC--R.C. 1547.11(B)[1]):

(1) The person has a blood alcohol concentration of at least .02% but less than .08% in the person's whole blood.

(2) The person has a concentration of at least .03% but less than .96% by weight per unit volume of alcohol in the person's blood serum or plasma.

(3) The person has a concentration of at least .028 but less than .11 grams or more by weight of alcohol per 100 milliliters in the person's urine.

(4) The person has a concentration of at least .02 but less than .08 grams or more by weight of alcohol per 210 liters of the person's breath.

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[1] *These prohibited levels of alcohol in a person's whole blood, blood serum or plasma, breath, or urine were enacted by Am. Sub. H.B. 87 of the 125th General Assembly.*

A violation of either of these prohibitions is generally a misdemeanor of the first degree (R.C. 1547.99).

Operation of the bill

For state watercraft OVI, the bill changes the prohibited concentration of alcohol in the person's blood serum or plasma from .96% or more by weight per unit volume to .096% or more by weight per unit volume of alcohol. It also changes the upper limit of the prohibited range of concentration of alcohol in the person's blood serum or plasma from .96% by weight per unit volume to .096% by weight per unit volume of alcohol. (R.C. 1547.11(A)(3) and (B)(2).) This correction aligns state watercraft OVI and OVUAC with the state OVI and OVUAC law, which also specifies that, as of January 1, 2004, the prohibited concentration of alcohol in a person's blood serum or plasma is .096% (R.C. 4511.19(A)(3) and (B)(2), not affected by the bill).

Vehicular homicide and vehicular assault offenses

Current law, unaffected by Am. Sub. S.B. 123, prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft from causing the death of another or the unlawful termination of another's pregnancy in one of the following ways: (1) as the proximate result of committing state OVI or a substantially equivalent offense, (2) as the proximate result of committing state watercraft OVI or a substantially equivalent offense, (3) as the proximate result of committing state aircraft OVI or a substantially equivalent offense, (4) recklessly, (5) negligently, or (6) as the proximate result of committing a violation of any provision contained in the General Traffic Law (Title 45) that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any General Traffic Law provision that is a minor misdemeanor. A person who violates one of these prohibitions is guilty of aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter. (R.C. 2903.06.)

Current law also prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing serious physical harm to another person or another's unborn as a proximate result of committing (1) state OVI or a substantially equivalent offense, (2) state watercraft OVI or a substantially equivalent offense, (3) state aircraft OVI or a substantially equivalent offense, or (4) recklessly. A person who violates one of these provisions is guilty of aggravated vehicular assault or vehicular assault. (R.C. 2903.08.)

Operation of the bill

The bill removes the word "motor" from the vehicular homicide offenses and the vehicular assault offenses.[2] Therefore, the offenses are violated when a person commits the prohibited acts while operating or participating in the operation of vehicles that are not motor vehicles. (R.C. 2903.06 and 2903.08.)

Failure to comply with an order or signal of a police officer

Under continuing law, a person is prohibited from failing to comply with an order or signal of a police officer by either (1) failing to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic or (2) operating a motor vehicle so as to willfully elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop. Generally, violation of this prohibition is a misdemeanor of the first degree. (R.C. 2921.331.)

Am. Sub. S.B. 123 requires a court, in addition to any other sanctions imposed for a violation of failure to comply with an order or signal of a police officer, to impose a Class 2 suspension upon an offender (a definite period between three years and life). The bill reduces the mandatory suspension from a Class 2 to a Class 6 (a definite period between three months and two years) when the offense is committed by a person who fails to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic. The bill maintains existing law's Class 2 suspension requirement when the offense is committed by a person who operates a motor vehicle so as to willfully elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop. (R.C. 2921.331(E).)

Sentencing for felony OVI

Under existing law, if a person is sentenced for a felony OVI of the third or fourth degree, a court is generally prohibited from sentencing the offender to community control sanctions under R.C. 2929.16 or 2929.17 if the offender is sentenced to a prison term. The bill clarifies that when a court imposes a prison sentence for a felony OVI offense, the court may also sentence the offender to community control sanctions. The bill also specifies that if a court imposes a mandatory term of local incarceration for a fourth degree felony OVI offense, the court may also impose a prison term. (R.C. 2929.13(A)(1), (A)(2), (G)(1), and

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[2] *This modification is similar to the change in Am. Sub. S.B. 123 that amended the term OMVI to OVI.*

(G)(2), 2929.14(D)(4), 2929.15(A)(1), 2929.16(A), 2929.17, 2929.19(C)(2), 4511.19(G)(1)(d)(i), (G)(1)(d)(ii), (G)(1)(e)(i), and (G)(1)(e)(ii).)

Impoundment of identification license plates

Am. Sub. S.B. 123 requires a court to impound the identification license plates of any motor vehicle registered in the name of a person convicted of driving under suspension or in violation of a license restriction as prohibited by R.C. 4510.11, driving under an OVI suspension in violation of R.C. 4510.14, or driving under a financial responsibility (FR) suspension or cancellation in violation of R.C. 4510.21 or if a court impounds the identification license plates of a person under R.C. 4507.164. The bill changes this mandatory impoundment requirement to a permissive provision. Thus, a court may impound, but is not required to impound, identification license plates of a person who is convicted of such offenses. (R.C. 4507.02(B)(1).)

Petitioning for limited driving privileges

Generally, Am. Sub. S.B. 123 restricts courts from granting limited driving privileges during any suspension imposed by the Bureau of Motor Vehicles unless a provision of the Revised Code allows a court to do so.[3] If a court is permitted to grant limited driving privileges, Am. Sub. S.B. 123 requires a petition to be filed in a court of record in the county in which the person who is under suspension resides. If a person is not an Ohio resident, the person must file a petition for privileges in the Franklin county municipal court, or, if the non-resident is a minor, the person may file a petition only in the Franklin county juvenile court.

The bill expands the available courts in which a non-resident may file a petition for limited driving privileges. Under the bill, a non-resident may file such a petition either in the Franklin county municipal court or in the municipal or county court located in the county where the offense occurred. If the non-resident is a minor, the person may file a petition either in the Franklin county juvenile court or in the juvenile court with jurisdiction over the offense. (R.C. 4510.021(B).)

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[3] *Am. Sub. S.B. 123 specifies that "limited driving privileges" include occupational, educational, vocational, or medical purposes, taking the driver's or commercial driver's license examination, and attending court-ordered treatment. (R.C. 4510.021(A), unaffected by the bill.)*

Permissive Class 7 court suspensions for certain offenses

Am. Sub. S.B. 123 requires courts to impose, in addition to any other applicable penalties, Class 7 suspensions (a definite period of not more than one year) for the following offenses:

(1) Driving under suspension or in violation of a license restriction in violation of R.C. 4510.11 (a misdemeanor of the first degree);

(2) Operating a motor vehicle without a valid license in violation of R.C. 4510.12 (a misdemeanor of varying degrees depending on circumstances);

(3) Driving under a financial responsibility law suspension or cancellation in violation of R.C. 4510.16 (a misdemeanor of the first degree);

(4) Wrongful entrustment of a motor vehicle in violation of R.C. 4511.203 (a misdemeanor of the first degree).

The bill changes the mandatory imposition of a Class 7 suspension to a permissive imposition. (R.C. 4510.11(C)(1), 4510.12(D), 4510.16(B)(1), and 4511.203(C).)

Operating a motor vehicle without a valid license

Continuing law

Continuing law generally prohibits a person from operating a motor vehicle or motorcycle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in Ohio unless the person has a valid driver's license or commercial driver's license (R.C. 4510.12(A)). Whoever violates this prohibition is guilty of operating a motor vehicle without a valid license and is punished as follows (R.C. 4510.12(B)):

(1) If the offender's license was expired at the time of the offense for no more than six months, the offense is a minor misdemeanor.

(2) If the offender's license was expired for more than six months then the offense is a misdemeanor of the fourth degree.

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

(4) If the offender has two prior convictions or guilty pleas for operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the second degree.

(5) If the offender has three or more prior convictions or guilty pleas for operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance within the past three years, the offense is a misdemeanor of the first degree.

Operation of the bill

The bill expands the penalty for the offense of operating a motor vehicle without a valid license so that if a trier of fact finds that an offender never has held a valid driver's license or commercial driver's license issued in Ohio or another jurisdiction, the offense is a misdemeanor of the first degree (R.C. 4510.12(B)(1)).

Restricted license plates as a condition of limited driving privileges under an OVI suspension

Am. Sub. S.B. 123 generally requires that when a court grants limited driving privileges to an offender whose driver's or commercial driver's license has been suspended for a violation of state or municipal OVI, the court must require the offender to display restricted plates (currently these plates are yellow with scarlet lettering) on the vehicle that is driven subject to the limited privileges.

The bill eliminates the requirement that a court must require a person to display restricted license plates as a condition of granting limited driving privileges when a license has been suspended for state or municipal OVI if the person previously has not been convicted of or pleaded guilty to prior violations of state OVI within the previous six years and has been convicted of or pleaded guilty to felony state OVI any time previously. The bill makes no change to the mandatory display of restricted plates as a condition of granting limited driving privileges to an individual who has been convicted of or pleaded guilty to multiple prior state or municipal OVI violations within the previous six years. (R.C. 4510.13(A)(7).)

Class 5 suspension for reckless operation

Current law permits a court to suspend a person's license whenever the person is found guilty under the laws of Ohio or under an ordinance of a political subdivision of operating a motor vehicle in violation of such a law or ordinance relating to reckless operation (R.C. 4507.34). Am. Sub. S.B. 123 limits this provision to read that a court may impose a Class 5 suspension (a definite period

of between six months and three years) upon an offender who is found guilty of reckless operation of a motor vehicle under Ohio law or under any ordinance of an Ohio political subdivision (R.C. 4510.15). The bill generally returns this provision to current law: a court is allowed to impose a Class 5 suspension upon any person found guilty of operating a motor vehicle in violation of an Ohio law or a municipal ordinance relating to reckless operation (R.C. 4510.15).

Five year look-back period for driving under an FR suspension or cancellation

Am. Sub. S.B. 123

Am. Sub. S.B. 123 prohibits a person from operating a motor vehicle or knowingly permitting any motor vehicle owned by the person to be operated by another person in the state during the period when the person is required to file and maintain proof of financial responsibility because the person previously has operated or permitted the operation of a motor vehicle in Ohio without sufficient proof of financial responsibility as prohibited by R.C. 4509.101. Whoever violates this prohibition is guilty of driving under financial responsibility suspension or cancellation, which is a misdemeanor of the first degree. (R.C. 4510.16(A) and (B)(1).)

Am. Sub. S.B. 123 requires, in addition to other applicable sanctions, the immobilization of the vehicle involved in the offense as follows (R.C. 4510.16(B)(2)):

(1) Generally, a court must order the immobilization of the vehicle involved in the offense of driving under financial responsibility suspension or cancellation and the impoundment of the license plates of that vehicle for 30 days.

(2) However, if the offender previously has been convicted of or pleaded guilty to one violation of the prohibition of driving under financial responsibility suspension or cancellation or a substantially similar municipal ordinance, the court must order the immobilization of the vehicle involved in the offense and the impoundment of the license plates of that vehicle for 60 days.

(3) If the offender previously has been convicted of or pleaded guilty to two or more violations of the prohibition of driving under financial responsibility suspension or cancellation or a substantially similar municipal ordinance, the court must order the criminal forfeiture to the state of the vehicle involved in the offense or fine the offender in an amount equal to the value of the vehicle in specified circumstances.

Operation of the bill

The bill establishes a look-back period of five years when courts enhance the immobilization and impoundment or criminal forfeiture penalties for persons who are guilty of driving under financial responsibility law suspension or cancellation and who have previously been convicted of or pleaded guilty to driving under a financial responsibility law suspension or cancellation. Thus, only if a person has prior convictions or guilty pleas to driving under financial responsibility law suspension or cancellation within the prior five years of the offense must the immobilization and impoundment penalty of 30 days be enhanced, as discussed above. (R.C. 4510.16(B)(2)(b) and (c).)

Limited driving privileges for violations of certain federal statutes or other states' statutes

Am. Sub. S.B. 123

Am. Sub. S.B. 123 requires the Registrar of the Bureau of Motor Vehicles to impose a Class D suspension (a definite period of six months) of an Ohio resident's license, permit, or privilege when the person (including a juvenile) has been convicted of or pleads guilty to a statute of another state or federal statute that is substantially similar to the following Ohio drug offenses: corrupting another with drugs, trafficking in drugs, illegal manufacture of drugs or cultivation of marihuana, illegal assembly or possession of chemicals for the manufacture of drugs, funding of drug or marihuana trafficking, illegal administration or distribution of anabolic steroids, possession of drugs, possessing drug abuse instruments, permitting drug abuse, illegal use or possession of drug paraphernalia, selling drug paraphernalia to juveniles, illegal advertising of drug paraphernalia, deception to obtain a dangerous drug, illegal processing of drug documents, abusing harmful intoxicants, trafficking in harmful intoxicants, improperly dispensing or distributing nitrous oxide, illegal dispensing of drug samples, possession of counterfeit controlled substances, trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising. (R.C. 4510.17(A) and (C), unaffected by the bill.) Additionally, the Registrar is required to impose a Class D suspension upon an Ohio resident (including a juvenile) who is convicted of or pleads guilty to federal law or the law of another state that is substantially similar to state OVI or OVUAC. (R.C. 4510.17(B) and (D), unaffected by the bill.)

Am. Sub. S.B. 123 allows a person (including a juvenile) who pleads guilty or is convicted of another state's OVI or OVUAC law or federal OVI or OVUAC law to petition the municipal court, county court, or juvenile court in whose jurisdiction the person resides for limited driving privileges during the suspension.

The court is prohibited, however, from granting limited driving privileges during the following "hard" part of the suspension:

(1) The first 15 days of the suspension if the person has not been convicted within six years of another jurisdiction's OVI or OVUAC law, state OVI or OVUAC or municipal OVI, a municipal ordinance relating to operating a motor vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, involuntary manslaughter in violation of R.C. 2903.04 when the proximate cause of the offense was a violation of state OVI or OVUAC, vehicular homicide or vehicular assault (collectively "qualifying prior offenses");

(2) The first 30 days of the suspension if the person has been convicted of a qualifying prior offense once within six years of the offense giving rise to the suspension;

(3) The first 180 days of such a suspension if the person has been convicted of or pleaded guilty to two prior qualifying offenses within the preceding six years;

(4) No limited driving privileges are permitted if the person has been convicted of or pleaded guilty to three or more qualifying prior offenses in the prior six years (R.C. 4510.17(E)).

Operation of the bill

The bill expands this authorization to petition for limited driving privileges to a person (including a juvenile) who is convicted of or pleads guilty to a statute of another state or federal statute that is substantially similar to the drug offenses listed above. The bill does not include any provisions mandating a "hard" suspension, as it does for violations of another jurisdiction's OVI or OVUAC law. (R.C. 4510.17(E).)

Modification or termination of a Class 1 or 2 suspension

Continuing law permits a person to file a motion with the sentencing court for modification or termination of a Class 1 suspension (a definite period of life) or a Class 2 suspension (a definite period of between three years to life) when the period of suspension is in excess of 15 years. The law in effect as of Am. Sub. S.B. 123 specifies that such a motion may be heard only once and that 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, Ohio law, or

the law of any political subdivision, or any violation of a suspension under R.C. Chapter 4510. or a substantially equivalent municipal ordinance;

(3) The person has proof of financial responsibility, a policy of liability insurance in effect that meets certain minimum standards, or proof, to the satisfaction of the Registrar of Motor Vehicles, that the person is able to respond in damages in an amount at least equal to the minimum standards;[4]

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

Operation of the bill

The bill eliminates the requirement that the person filing the motion demonstrate that at least 15 years have elapsed since the suspension began. The other elements a motion must demonstrate, listed in (2) through (4) above, remain the same. (R.C. 4510.54(A).) The bill also specifies that a court may deny a motion without a hearing but cannot grant such a motion without a hearing. If the court denies a motion without a hearing, the person may file a subsequent motion for modification or termination of such a suspension. However, if a court denies such a motion after a hearing, the court is barred from considering subsequent motions for that same person. (R.C. 4510.54(B).)

Termination of an ALS suspension upon a guilty plea or plea of no contest to state OVI or OVUAC or municipal OVI

Continuing law requires an arresting law enforcement officer to suspend the license, permit, or privilege of a person who refuses to take a chemical test of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug, or alcohol and drug content of the person's whole blood, blood serum or plasma, breath or urine if that person is arrested for state OVI or OVUAC, having physical control of a vehicle while under the influence in violation of R.C. 4511.194 or municipal OVI. (R.C. 4511.191(B)(1).)

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[4] *R.C. 4509.51(B) provides that the minimum standards of financial responsibility are as follows: (1) $12,500 for bodily injury to or death to one person in any one accident, (2) $25,000 for bodily injury to or death to two or more persons in any one accident, and (3) $7,500 because of injury to property of others in any one accident.*

Additionally, an arresting law enforcement officer must suspend the license, permit, or privilege of a person who is arrested for state OVI or OVUAC, having physical control of a vehicle while under the influence in violation of R.C. 4511.194, or municipal OVI if the person submits to a chemical test and the results of that test indicate a prohibited level of alcohol. (R.C. 4511.191(C)(1).) The Registrar of Motor Vehicles is then required to enter the suspension and the period of the suspension in the Registrar's records.

Am. Sub. S.B. 123 specifies that the Registrar is required to terminate the administrative (ALS) suspension of the offender's license, permit, or privilege upon receiving notice that the person has entered a guilty plea or has been convicted of state OVI or OVUAC or municipal OVI on the basis of the facts that led to the arresting officer's suspension.

The bill modifies when the Registrar is required to terminate the ALS suspension so that the Registrar is required to terminate a suspension upon receipt of notice that the person has entered a guilty plea to or that the person has been convicted after entering a plea of no contest under Criminal Rule 11 to state OVI or OVUAC or municipal OVI. (R.C. 4511.191(B)(2) and (C)(2).)

Retroactive application of Am. Sub. S.B. 123 and the bill

Am. Sub. S.B. 123 mandates that the provisions of the act that amended or enacted Revised Code sections only apply to conduct and offenses committed on or after January 1, 2004; conduct and offenses committed prior to January 1, 2004, must be governed by the law in effect on the date the conduct or offense was committed. (Section 5 of Am. Sub. S.B. 123.)

The bill adds the following three exceptions to the prospective nature of changes made by Am. Sub. S.B. 123 and the bill:

(1) A person whose driver's or commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege was suspended by a court may apply to the sentencing court for limited driving privileges pursuant to R.C. 4510.021(A).

(2) A person whose license, permit, or privilege was suspended by the Registrar of Motor Vehicles may apply for limited driving privileges under R.C. 4510.021(B), discussed above in "***Petitioning for limited driving privileges***," if limited driving privileges are expressly authorized by a section of the Revised Code for the type of conduct or offense that caused the suspension.

(3) A person whose license, permit, or privilege was suspended, canceled, or revoked for life may file a motion for modification or termination of the

suspension, cancellation, or revocation in accordance with R.C. 4510.54, as discussed above in "***Modification or termination of a Class 1 or 2 suspension***."

The bill also requires that the terms and conditions of any limited driving privileges granted under these three provisions are to be governed by the law in effect on and after January 1, 2004. (Section 3.)

Suspensions for street racing

Continuing law prohibits a person from participating in street racing upon any public road, street, or highway in Ohio.[5] Whoever violates this prohibition is guilty of street racing, a misdemeanor of the first degree. When a person pleads guilty to or is convicted of street racing, Am. Sub. S.B. 123 requires a court, in addition to any other available sanctions, to 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 or more than one year. In imposing such a suspension, a court is prohibited from suspending the first 30 days of any such suspension.

The bill modifies the mandatory suspension provision. Under the bill, a court is required to suspend the license, permit, or privilege of a person who is convicted of or pleads guilty to street racing for not less than 30 days or more than three years. The mandatory "hard" suspension of 30 days is unaffected by the bill. (R.C. 4511.251(C).)

Definitional changes

Electrical personal assistive mobility device

For purposes of the Traffic Law (R.C. Chapters 4511. and 4513.), current law excludes "electrical personal assistive mobility devices" from the definition of a vehicle.[6] The bill clarifies that "any electrical personal assistive mobility device" is excluded from the definition of a vehicle. (R.C. 4511.01(A).)

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[5] *"Street racing" means 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. (R.C. 4511.251(A).)*

[6] *"Vehicle" is defined as "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, electric personal assistive mobility devices, any device that is moved by power collected from overhead electric trolley wires*

Operate

Currently, "operate" means 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. The bill modifies the definition so that "operate" means to cause or have caused movement of a vehicle, streetcar, or trackless trolley. (R.C. 4511.01(HHH).)

Statutory references to the offense of having physical control of a vehicle while under the influence

The bill clarifies in several Revised Code sections that references to the offense of having physical control of a vehicle in violation of R.C. 4511.194 also includes reference to a substantially equivalent municipal ordinance. (R.C. 4511.191(A)(2), (B)(1), (C)(1), and (D)(2), 4511.192(A), (D)(1), (D)(1)(d)(i), (D)(1)(d)(ii), (D)(1)(d)(iv), and (D)(2), 4511.196(A), and 4511.197(A) and (C)(1).)

Terminology for restricted plates

Generally, the term "restricted" license plate is used in the Revised Code to refer to the yellow and scarlet license plates issued to certain offenders as a condition of limited driving privileges. However, in current law the term "special" license plate is also used to refer to these license plates. To avoid confusion, the bill replaces the term "special" with "restricted." (R.C. 4507.02(B)(2) and (3).)

HISTORY

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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).)