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*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 324**

125th General Assembly  
(As Passed by the House)

**Reps. Oelslager, Latta, Willamowski, Collier, Gilb, Seitz, Callender, Allen, Barrett, Buehrer, Calvert, Chandler, Cirelli, Daniels, DeBose, C. Evans, Fessler, Flowers, Gibbs, Hagan, McGregor, Niehaus, Otterman, S. Patton, Schlichter, Schmidt, Setzer**

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### **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), and in other related provisions, 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.

- Provides that, when a court imposes a mandatory term of local incarceration for a fourth degree felony OVI offense, the court imposes any additional community control sanction, and the offender violates any condition of the sanction, the court may take any action prescribed in R.C. 2929.15(B) relative to the offender's violation of the sanction, including imposing a prison term on the offender pursuant to that provision.
- Provides 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, and the person under suspension 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 the 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, municipal OVI, or an "equivalent offense" within the previous six years and has not been convicted of or pleaded guilty to felony state OVI any time previously.
- Revises the law governing license suspensions for reckless operation offenses to allow 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.
- 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.

- Amends several sections that refer to R.C. 4511.194, which is the offense of having physical control of a vehicle while under the influence, to also include references to a substantially equivalent municipal ordinance.
- Removes references to "special" license plates in favor of the term "restricted" license plates.
- Requires that, when a person with a temporary instruction permit and identification card drives a motor vehicle, the eligible adult or person over 21 years of age who occupies the seat beside the person driving the motor vehicle not have a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine.
- 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 (hereafter, S.B. 123) enacted numerous traffic law revisions that were recommended by the Ohio Criminal Sentencing Commission and that were effective January 1, 2004. The bill modifies some of the provisions contained in Am. Sub. S.B. 123 and corrects several errors in those provisions and other related provisions. In an attempt to ensure 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 (Sections 6 and 7); however, the bill was not enacted prior to that date, so the bill could not take effect in the manner specified).

### **State watercraft OVI and OVUAC**

#### **Existing law**

**Prohibitions.** 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, any 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))<sup>1</sup>:

(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.

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<sup>1</sup> *The prohibited levels of alcohol in a person's whole blood, blood serum or plasma, breath, or urine specified for state watercraft OVI and for state watercraft OVUAC were enacted by Am. Sub. H.B. 87 of the 125th General Assembly.*



(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.

**Penalties.** A violation of either of the prohibitions described above is a misdemeanor of the first degree, and the law specifies mandatory terms of imprisonment and mandatory fines that must be imposed on the offender (see **COMMENT 1**) (R.C. 1547.99(G)).

### **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. For state watercraft OVUAC, it 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, unchanged by 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 under a municipal ordinance, (2) as the proximate result of committing state watercraft OVI or a substantially equivalent offense under a municipal ordinance, (3) as the proximate result of committing state aircraft OVI or a substantially equivalent offense under a municipal ordinance, (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. Depending upon the prohibition violated, a person who violates one of these prohibitions is guilty of either aggravated vehicular homicide (a felony of the first, second, or third degree, depending upon the circumstances present), vehicular homicide (a felony of the fourth degree or

misdemeanor of the first degree), or vehicular manslaughter (a misdemeanor of the first or second degree). (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. Depending upon the prohibition violated, a person who violates one of these provisions is guilty of either aggravated vehicular assault (a felony of the second or third degree) or vehicular assault (a felony of the third or fourth degree). (R.C. 2903.08.)

### **Operation of the bill**

The bill removes the word "motor" from the vehicular homicide offenses and the vehicular assault offenses.<sup>2</sup> Therefore, under the bill, the offenses are committed when a person commits any of the prohibited acts while operating or participating in the operation of a *vehicle*, instead of when the person commits them while operating or participating in the operation of a *motor vehicle*. (R.C. 2903.06 and 2903.08; as used in these offenses, the term "vehicle" is broader in scope than the term "motor vehicle"--see **COMMENT 2**.)

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

#### **Existing law**

Under existing law, unchanged by S.B. 123, a person is prohibited from doing either of the following: (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. A violation of either prohibition is the offense of failure to comply with an order or signal of a police officer. A violation of the prohibition described in clause (1) is a misdemeanor of the first degree; a violation of the prohibition described in clause (2) generally is a misdemeanor of the first degree but, in certain specified circumstances, it is a felony of the third or fourth degree. (R.C. 2921.331.)

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<sup>2</sup> *This modification makes the language of the provisions, as to vehicles, consistent with that of the existing offenses of state OVI and state OVUAC, contained in R.C. 4511.19.*

Other provisions of existing law, enacted in S.B. 123, require a court, in addition to any other sanctions imposed for a violation of either prohibition included in the offense of failure to comply with an order or signal of a police officer, to impose a Class 2 suspension upon the offender (a definite period between three years and life). If the offender previously has been found guilty of a violation of either of those prohibitions, the court must impose a Class 1 suspension on the offender (a definite period for the life of the offender). The court cannot grant limited driving privileges to the offender and cannot suspend the first three years of suspension under a Class 2 suspension or any portion of the suspension under a Class 1 suspension required under the provision.

### **Operation of the bill**

The bill reduces the mandatory suspension from a Class 2 or Class 1 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. Also, under the bill, the existing restrictions on grants of limited driving privileges and "suspensions of the suspension" do not apply to a suspension imposed upon a person for the offense committed in those circumstances. The bill maintains existing law's Class 2 or Class 1 suspension requirement, and existing law's restrictions on grants of limited driving privileges and "suspensions of the suspension," 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**

#### **Existing law**

Under existing law, in certain circumstances involving offenders who previously have been convicted of multiple vehicle-related and alcohol-related offenses, state OVI is a felony of the third or fourth degree. If an offender is being sentenced for a fourth degree felony OVI offense, the court may impose upon the offender a mandatory term of local incarceration of 60 days or 120 days, whichever is specified under R.C. 4511.19 and depending upon the amount of alcohol in the offender's system (a mandatory term of local incarceration so imposed is not subject to any Revised Code provision that pertains to a prison term). If an offender is being sentenced for a third degree felony OVI offense, or is being sentenced for a fourth degree felony OVI offense and the court does not impose a mandatory term of local incarceration as described in the preceding sentence, the court must impose upon the offender a mandatory prison term of 60 or 120 days, whichever is specified under R.C. 4511.19 and depending upon the

amount of alcohol in the offender's system (the court may not sentence the offender to a community control sanction under R.C. 2929.16 or 2929.17). In no case may an offender who once has been sentenced to a mandatory term of local incarceration for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration for a state OVI conviction. (R.C. 2929.13(G).)

Existing law also specifies that, in addition to the mandatory term of local incarceration or the mandatory prison term required for a third or fourth degree felony OVI offense, as described in the preceding paragraph, the court must impose upon the offender a specified mandatory fine and may impose whichever of the following is applicable: (1) for a fourth degree felony OVI offense for which a mandatory term of local incarceration is imposed, an additional community control sanction or combination of community control sanctions under R.C. 2929.16 or 2929.17, as described below, or (2) for a third or fourth degree felony OVI offense for which a mandatory prison term is imposed, an additional prison term under R.C. 2929.14(D)(4), as described below (R.C. 2929.13(A)).

Existing R.C. 2929.16 and 2929.17 provide that, if an offender is sentenced to a mandatory term of local incarceration for a fourth degree felony OVI offense under R.C. 2929.13(G), in addition to the mandatory term of local incarceration, the court may impose one or more community residential sanctions or nonresidential sanctions, to be served or satisfied after the offender has served the mandatory term of local incarceration (R.C. 2929.16(A) and 2929.17; also R.C. 2929.15(A), 2929.19(C)(1), and 4511.19(G)(1)(d)).

Existing R.C. 2929.14(D)(4) provides that, if an offender is sentenced to a mandatory prison term for a third or fourth degree felony OVI offense under R.C. 2929.13(G), in addition to the mandatory prison term, the court may sentence the offender to a definite prison term of not less than six months and not more than 30 months if the offense is a fourth degree felony OVI offense, and may sentence the offender to an additional prison term of any duration specified under R.C. 2929.14(A)(3) if the offense is a third degree felony OVI offense. In either case, the additional prison term imposed must be reduced by the 60 or 120 days imposed as the mandatory prison term, and other provisions govern the service of the terms. The court cannot sentence the offender to a community control sanction under R.C. 2929.16 or 2929.17. (R.C. 2929.14(D)(4); also R.C. 2929.15(A)(1), 2929.19(C)(2), and 4511.19(G)(1)(d) and (e).)

### **Operation of the bill**

The bill modifies the existing provisions that prohibit the imposition of a prison term on an offender who is sentenced to a mandatory term of local incarceration for a fourth degree felony OVI offense and that prohibit the

imposition of a community control sanction on an offender who is sentenced to a mandatory prison term for a third or fourth degree felony OVI offense.

(1) Under the bill, if a person is sentenced to a mandatory term of local incarceration for a fourth degree felony OVI offense, if the court imposes upon the offender any community control sanction, and if the offender violates any condition of the sanction, the court may take any action prescribed in R.C. 2929.15(B) relative to the offender, including imposing a prison term on the offender pursuant to that provision. Existing R.C. 2929.15(B), unchanged by the bill, specifies that, if the conditions of a community control sanction are violated or if the offender violates a law or leaves Ohio without permission of the court or the offender's probation officer, the sentencing court may impose a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit for community control sanctions, may impose a more restrictive community control sanction, or may impose a prison term under R.C. 2929.14. Any prison term so imposed on a violator under this provision must be within the range of prison terms available for the offense for which the sanction that was violated was imposed. The court may reduce the longer period of time, the more restrictive sanction, or the prison term imposed under this provision by the time the offender successfully spent under the sanction that initially was imposed. (R.C. 2929.13(A)(1) and (G)(1), 2929.14(A) and (D)(4), 2929.15(A)(1), 2929.19(C)(1), and 4511.19(G)(1)(d).)

(2) Under the bill, if a person is sentenced to a mandatory prison term for a third or fourth degree felony OVI offense, in addition to the mandatory prison term and any other prison terms imposed on the offender for the offense, the court may sentence the offender to a community control sanction under R.C. 2929.16 or 2929.17, but the offender must serve the mandatory prison term and all other prison terms imposed on the offender for the offense prior to serving the community control sanction. (R.C. 2929.13(A)(2) and (G)(2), 2929.14(D)(4), 2929.15(A)(1), 2929.16(A), 2929.17(A), 2929.19(C)(2), and 4511.19(G)(1)(d) and (e).)

### **Impoundment of identification license plates**

Provisions of existing law enacted in S.B. 123 require a court, in addition to or independent of any other penalty, 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 any of the specified offenses. (R.C. 4507.02(B)(1).)

**Petitioning for limited driving privileges under an administrative license suspension**

Provisions of existing law enacted in S.B. 123 generally restrict 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.<sup>3</sup> If a court is permitted to grant limited driving privileges, existing provisions enacted in S.B. 123 require 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 a BMV suspension. 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).)

**Permissive Class 7 court suspensions for certain offenses**

Provisions of existing law enacted in S.B. 123 requires courts to impose, in addition to any other applicable penalties, Class 7 suspensions of the offender's driver's or commercial driver's license or permit or nonresident operating privilege (a definite period of not more than one year) for various offenses, including the following:

(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 specified circumstances, in violation of R.C. 4510.12 (a misdemeanor of varying degrees depending on circumstances);

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<sup>3</sup> Provisions of existing law enacted in S.B. 123 specify 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.)

(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).

For the offenses listed above in (1) to (4), 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**

#### **Existing law**

Existing 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)). A person who 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 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 license or commercial driver's license issued in Ohio or another jurisdiction, the offense is a misdemeanor of the first degree. It reorganizes, but does not otherwise change the existing penalty provisions. (R.C. 4510.12(B)(1).)

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

Provisions of existing law enacted in S.B. 123 generally require that when a court grants limited driving privileges to an offender whose driver's or commercial driver's license has been suspended for a state or municipal OVI conviction, 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 the person's license has been suspended for state or municipal OVI and the person previously has not been convicted of or pleaded guilty to one or more prior state OVI, municipal OVI, or "equivalent offense" violations within the previous six years and has not 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 one or more prior state OVI, municipal OVI, or equivalent offense violations within the previous six years or who previously has been convicted of or pleaded guilty to felony of state OVI. (R.C. 4510.13(A)(7).)

### **Class 5 suspension for reckless operation**

The law in effect prior to S.B. 123 permitted a court to suspend a person's driver's or commercial driver's license or permit or nonresident operating privilege whenever the person was 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). S.B. 123 changed 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 pre-S.B. 123 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**

**S.B. 123**

Provisions of existing law enacted in S.B. 123 prohibit 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. A person who 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).)

Provisions of existing law enacted in S.B. 123 require, in addition to other applicable sanctions, the immobilization of the vehicle involved in the offense, if it is registered in the offender's name, 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) 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, for purposes of the immobilization and impoundment or criminal forfeiture penalties for persons who are guilty of driving under financial responsibility law suspension or cancellation, regarding the relevance of prior convictions or guilty pleas of driving under a

financial responsibility law suspension or cancellation. Thus, only if a person has one or more prior convictions or guilty pleas to driving under financial responsibility law suspension or cancellation within the prior five years of the offense is the immobilization and impoundment penalty of 30 days 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**

**S.B. 123**

Provisions of existing law enacted in S.B. 123 require the Registrar of Motor Vehicles to impose a Class D suspension (a definite period of six months) of an Ohio resident's driver's or commercial driver's license or permit or nonresident operating 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).) 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).)

Other existing provisions enacted in S.B. 123 allows a person (including a juvenile) who pleads guilty or is convicted of another state's 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 the date of the offense giving rise to the suspension of 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, aggravated vehicular homicide involving state OVI or aggravated vehicular assault, or another specified current or former alcohol-related and vehicle-related homicide offense (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 the existing authorization to petition for limited driving privileges that currently applies regarding other states' OVI convictions so that it also applies 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 for limited driving privileges granted under the expansion, 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**

Existing law, enacted in S.B. 123, 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 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;<sup>4</sup>

(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 the 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**

Existing 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).) 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

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<sup>4</sup> 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.

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.

Provisions of existing law enacted in S.B. 123 specify that the Registrar must 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 same incident 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 must 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 that arose from the same incident that led to the suspension. (R.C. 4511.191(B)(2) and (C)(2).)

#### **Retroactive application of S.B. 123 and the bill**

Uncodified law included in 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 S.B. 123.)

The bill adds the following three exceptions to the prospective nature of changes made by S.B. 123 (as modified by 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 be governed by the law in effect on and after January 1, 2004. (Section 3.)

### **Suspensions for street racing**

Existing law prohibits a person from participating in street racing upon any public road, street, or highway in Ohio.<sup>5</sup> A person who 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, provisions of existing law enacted in S.B. 123 require 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.<sup>6</sup> 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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<sup>5</sup> "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).)

<sup>6</sup> "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, for purposes of the Traffic Law, "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 amends several Revised Code sections that currently refer to the offense of having physical control of a vehicle in violation of R.C. 4511.194, which was enacted in S.B. 123, to also include references 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 one section of 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).)

### **Sobriety of accompanying adult for a person who holds a temporary instruction permit and identification card**

#### **Current law**

Under current law, a person who is between the ages of 15 years and 6 months and 16 years and holds a temporary instruction permit and a temporary instruction permit identification card is prohibited from driving a motor vehicle upon the state's highways or public or private property used by the public for purposes of vehicular traffic or parking unless the person is accompanied by an eligible adult who actually occupies the seat beside the permit holder.<sup>7</sup>

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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).)*

<sup>7</sup> An eligible adult is defined as a parent, guardian, or custodian of the permit holder or a person who is at least 21 years old who acts in loco parentis of the permit holder who

Additionally, the permit holder must have the permit and identification card in the holder's immediate possession, the total number of occupants of the vehicle may not exceed the total number of occupant restraining devices originally installed in the motor vehicle by its manufacturer, and each occupant of the vehicle must be wearing all of the available elements of a properly adjusted occupant restraining device. (R.C. 4507.05(A)(1).)

If a person is at least 16 years of age, current law allows the permit holder to drive with any licensed operator who is at least 21 years of age and is actually occupying the seat beside the driver. Otherwise, the requirements for operating a motor vehicle with a temporary permit and instruction permit are the same as for a driver between the ages of 15 and 6 months and 16 years. (R.C. 4507.05(A)(2).)

A violation of either of these provisions is a minor misdemeanor (R.C. 4507.05(I), unchanged by the bill).

### **Operation of the bill**

The bill adds a requirement that the eligible driver or licensed operator who occupies the seat beside the permit holder must not have a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine as provided in R.C. 4511.19(A).<sup>8</sup> Otherwise, the bill does not modify a permit holder's obligations with respect to operating a motor vehicle. (R.C. 4507.05(A)(1)(b) and (2)(a) and (F)(2).)

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*holds a current valid driver's or commercial driver's license issued by Ohio. (R.C. 4507.05(H)(1), unchanged by the bill.)*

<sup>8</sup> *R.C. 4511.19(A) sets forth the offense of state OVI. It prohibits a person from operating any vehicle, streetcar, or trackless trolley in Ohio if at the time of the operation (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person has a concentration of .08% or more but less than .17% by weight per unit volume of alcohol in the person's whole blood, (3) the person has a concentration of .096% but less than .24% by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person has a concentration of .08 grams but less than .17 grams by weight of alcohol per 210 liters in the person's breath, (5) the person has a concentration of .11 grams or more but less than .238 grams by weight of alcohol per 100 milliliters of the person's urine, (6) the person has a concentration of .17% or more by weight per unit volume of alcohol in the person's whole blood, (7) the person has a concentration of .24% or more by weight per unit volume of alcohol in the person's blood serum or plasma, (8) the person has a concentration of .17 grams or more by weight of alcohol per 210 liters of the person's breath, or (9) the person has a concentration of .238 grams or more by weight of alcohol per 100 milliliters of the person's urine.*

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## COMMENT

1. Under existing law, a person convicted of state watercraft OVI or state watercraft OVUAC is guilty of a misdemeanor of the first degree, and the offender must be punished as follows (R.C. 1547.99(G)):

(a) Except as otherwise provided below in (1)(b) or (c), the court must sentence the offender to a jail term of three consecutive days and may sentence the offender pursuant to the Misdemeanor Sentencing Law to a longer jail term, and the court must impose a fine of not less than \$150 nor more than \$1,000. In specified circumstances, the court may suspend the execution of some or all of the mandatory jail term of three consecutive days in specified circumstances, or authorize work release from jail for the offender after the offender has served the mandatory three-day jail term.

(b) If, within six years of the offense, the offender has been convicted of one violation of the prohibition that constitutes state watercraft OVI or state watercraft OVUAC, of a similar municipal ordinance, of R.C. 2903.06(A)(1), or of R.C. 2903.06(A)(2), (3), or (4) or former R.C. 2903.06 or 2903.07 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 jail term of ten consecutive days and may sentence the offender pursuant to the Misdemeanor Sentencing Law to a longer jail term, and the court must impose a fine of not less than \$150 nor more than \$1,000. In addition to any other sentence it imposes, the court may require the offender to attend a certified drivers' intervention program. In specified circumstances, the court may authorize work release from jail for the offender after the offender has served the mandatory ten-day jail term.

(c) If, within six years of the offense, the offender has been convicted of more than one violation identified above in (1)(b), the court must sentence the offender to a jail term of 30 consecutive days and may sentence the offender to a longer term of not more than one year, and the court must impose a fine of not less than \$150 nor more than \$1,000. In addition to any other sentence it imposes, the court may require the offender to attend a certified drivers' intervention program. In specified circumstances, the court may authorize work release from jail for the offender after the offender has served the mandatory 30-day jail term.

2. R.C. 4501.01 provides that, as used in R.C. Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517., *and in the penal laws*, except as otherwise provided:

(a) "Vehicles" means everything on wheels or runners, including motorized bicycles, but does not mean electric personal assistive mobility devices, vehicles

that are operated exclusively on rails or tracks or from overhead electric trolley wires, and vehicles that belong to any police department, municipal fire department, or volunteer fire department, or that are used by such a department in the discharge of its functions.

(b) "Motor vehicle" means any vehicle, including mobile homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires. "Motor vehicle" does not include motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, trailers that are used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of 25 miles per hour or less, threshing machinery, hay-baling machinery, corn sheller, hammermill and agricultural tractors, machinery used in the production of horticultural, agricultural, and vegetable products, and trailers that are designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
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