



**H.B. 406**

126th General Assembly  
(As Introduced)

**Reps. T. Patton, Williams, Koziura, Brown, Allen**

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**BILL SUMMARY**

- Requires a court to impose a fine of \$500 upon an offender who is convicted of or pleads guilty to any of the following: (1) driving under suspension or in violation of a license restriction, (2) driving under financial responsibility law suspension or cancellation, (3) failing to verify proof of financial responsibility in specified circumstances in violation of the prohibition created by the bill and discussed in the ninth dot point below, (4) operating a motor vehicle without a valid license if a driver's license has been expired at the time of the offense for more than six months or if the offender has previously been convicted of or pleaded guilty to operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance, or (5) failure of a person who operated a motorcycle or rode as a passenger on a motorcycle to wear a protective helmet when required.
- Requires the court to allow the offender discussed in the prior dot point to choose either a weekend jail term or attendance at a safe and responsible driving instructional class.
- Provides that if the offender cannot pay the \$500 fine discussed in the second prior dot point, the court must sentence the offender to a weekend jail term and may not impose a fine upon the offender.
- Directs that the \$500 fine must be distributed to a fund to be used upon an order of the court to pay any court expenses the court determines should be paid from the fund, to the Traumatic Brain Injury Fund created by the bill to be used to fund grants made under the Traumatic Brain Injury Grant Program, and to the Safe and Responsible Driving Instructional Fund created by the bill to be used to pay the costs of safe and responsible driving instructional classes.

- Specifies that if a court is sentencing an offender for the offense of "driving under OVI suspension," the court must do either of the following: (1) if the court has the choice of either sentencing the offender to a mandatory jail term or term of house arrest with electronic monitoring, the court must permit the offender to instead choose to be required to attend a safe and responsible driving instructional class, or (2) if the court must impose a mandatory jail term upon the offender, the court also must sentence the offender to attendance at a safe and responsible driving instructional class.
- Creates in the state treasury the Safe and Responsible Driving Fund (funded by portions of the \$500 fines imposed under the bill) to be used to fund safe and responsible driving instructional classes that courts pursuant to the bill require certain offenders to attend.
- States that if a person attending a safe and responsible driving instructional class fails to complete the class successfully, the court that ordered the person to attend the class must hold a hearing as to the reason why the person did not successfully complete the class, and, if the court is not satisfied as to the validity of the reason, permits the court to order the person to attend the class again, at the person's own cost, or to sentence the offender to the applicable jail term prescribed in the section of the Revised Code under which the offender was charged and sentenced.
- Requires the Registrar of Motor Vehicles to adopt rules governing safe and responsible driving instructional classes.
- Increases the mandatory minimum fine that the court must impose upon an offender who is convicted of or pleads guilty to the offense of "driving under OVI suspension" from \$250 to \$500.
- Directs the Registrar of Motor Vehicles to inform the appropriate law enforcement agency in specified circumstances of a person's failure to demonstrate to the Registrar valid proof of financial responsibility when the person or a motor vehicle owned by the person is involved in a traffic accident that requires the filing of an accident report or the person receives a traffic ticket indicating that proof of the maintenance of financial responsibility was not produced upon request.

- Specifically prohibits a person who is required to verify the existence of proof of financial responsibility, as described in the prior dot point, from failing to do so and makes it an unclassified misdemeanor to violate the prohibition.
- Eliminates for the offense of "operating a motor vehicle without a valid license" the misdemeanor of the fourth degree penalty when an offender operates a motor vehicle without a valid license and the license has been expired for more than six months and the misdemeanor of the third degree penalty when the offender commits that offense and previously has been convicted of or pleaded guilty to one violation of operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance.
- Increases the age until which a person must wear a protective helmet while operating a motorcycle on a highway or being a passenger on a motorcycle from 18 to 25.
- Creates a Traumatic Brain Injury Grant Program, administered by the program director of the Brain Injury Program, to make grants from the Traumatic Brain Injury Fund created by the bill to Ohio nonprofit corporations whose purpose is to assist survivors and families of survivors of traumatic brain injury by providing community-based brain injury programs.
- Increases the minimum number of members on the Brain Injury Advisory Committee from 18 to 19.

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## CONTENT AND OPERATION

### *Driving under a suspension or in violation of a license restriction*

#### *Current law*

Under continuing law, unchanged by the bill, a person whose driver's or commercial driver's license or permit or nonresident operating privilege (collectively referred to as a "driver's license" throughout this analysis) has been suspended under any provision of the Revised Code, other than the Financial Responsibility Law (R.C. Chapter 4509.) or under any applicable law in any other jurisdiction in which the person's license was issued is prohibited from operating any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within Ohio during the period of suspension unless the person is granted limited driving privileges and is operating the vehicle in accordance with the terms of the limited driving privileges. Additionally, a person is prohibited from operating any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in this state in violation of any restriction of the person's driver's license imposed under R.C. 4506.10(D) or R.C. 4507.14. A violation of either of these prohibitions is the offense of driving under suspension or in violation of a license restriction ("DUS"). (R.C. 4510.11(A), (B), and (C).)

Under current law, DUS is a misdemeanor of the first degree. Additionally, the court must impose a Class 7 suspension on the offender's driver's license (a definite period of not more than one year). If the vehicle involved in the offense is

registered in the offender's name, the court must order the immobilization of the vehicle and impoundment of the license plates for 30 days on a first offense and 60 days if the offender previously has been convicted of or pleaded guilty to DUS or a substantially similar municipal ordinance. If the offender previously has been convicted of or pleaded guilty to DUS or a substantially similar municipal ordinance two or more times, the court must order the criminal forfeiture of the vehicle involved in the offense if the vehicle is registered in the offender's name. (R.C. 4510.11(C)(1), (2), (3), and (4).)

### **The bill**

The bill additionally requires the court to impose upon an offender who is convicted of or pleads guilty to DUS a fine of \$500 to be distributed as described below in "**Distribution of the \$500 fine**." It also requires the court to allow the offender to choose either a weekend jail term or attendance at a safe and responsible driving instructional class, as described below in "**Safe and responsible driving instructional classes**."<sup>1</sup> If the offender informs the court that the offender will not be able to pay the fine, the bill requires the court to impose a weekend jail term instead of any fine. (R.C. 4510.11(C)(3).) (See **COMMENT**.)

### **Driving under OVI suspension**

#### **Current law**

Current law prohibits any person whose driver's license has been suspended under R.C. 4511.19, 4511.191, 4511.196, or 4510.07 for a conviction of a violation of a municipal OVI ordinance from operating any motor vehicle upon the public roads or highways of Ohio during the period of suspension. A violation of this prohibition is the offense of "driving under OVI suspension." Generally, a court must sentence an offender who commits this offense under the Criminal Sentencing Law, except as otherwise authorized or required, as described in the following paragraph. (R.C. 4510.14(A) and (B).)

Generally, "driving under OVI suspension" is a misdemeanor of the first degree, and the court must sentence the offender to all of the following (R.C. 4510.14(B)(1)):

(1) A mandatory jail term of three consecutive days unless the court instead imposes a sentence of not less than 30 consecutive days and not more than

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<sup>1</sup> The bill defines a "weekend jail term" as meaning a minimum of 34 consecutive hours that commence not later than 8a.m. on a Saturday (R.C. 4509.106(D), 4510.11(G), 4510.12(F), 4510.14(F)(5) (even though the term is defined for purposes of this section, the term is not actually used in the section), 4510.16(E), and 4511.53(E)).

six months of house arrest with electronic monitoring. If the court imposes a mandatory three-day jail term, the court may impose a jail term in addition to that term, provided that in no case may the cumulative jail term imposed for the offense exceed six months.

(2) A fine of not less than \$250 and not more than \$1,000.

(3) A Class 7 license suspension (a definite period of not more than one year).

(4) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, immobilization for 30 days of the offender's vehicle and impoundment for 30 days of the identification license plates of that vehicle.

If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to one violation of "driving under OVI suspension" or one equivalent offense, "driving under OVI suspension" is a misdemeanor of the first degree, and the court must sentence the offender to all of the following (R.C. 4510.14(B)(2)):

(1) A mandatory jail term of ten consecutive days, unless the court instead imposes a sentence of not less than 90 consecutive days and not more than one year of house arrest with electronic monitoring. Notwithstanding the jail terms provided in sections 2929.21 to 2929.28 of the Revised Code, the court may sentence the offender to a longer jail term of not more than one year.

(2) Notwithstanding the fines provided for under the Criminal Sentencing Law, a fine of not less than \$500 and not more than \$2,500.

(3) A Class 7 license suspension (a definite period of not more than one year).

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

If, within six years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of "driving under OVI suspension" or two or more equivalent offenses, "driving under OVI suspension" is a misdemeanor, and the court must sentence the offender to all of the following (R.C. 4510.14(B)(3)):

(1) A mandatory jail term of 30 consecutive days. Notwithstanding the jail terms provided in sections 2929.21 to 2929.28 of the Revised Code, the court may sentence the offender to a longer jail term of not more than one year. The court may not sentence the offender to a term of house arrest with electronic monitoring in lieu of the mandatory portion of the jail term.

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

(3) A Class 7 license suspension (a definite period of not more than one year).

(4) If the vehicle the offender was operating at the time of the offense is registered in the offender's name, criminal forfeiture to the state of the offender's vehicle or a fine equal to the value of the vehicle if title to the motor vehicle is assigned or transferred.

Under current law 50% of any fine imposed by a court for "driving under OVI suspension" must be deposited into the county Indigent Drivers Alcohol Treatment Fund or municipal Indigent Drivers Alcohol Treatment Fund under the control of that court (R.C. 4510.14(D)).

### **The bill**

The bill specifies that, if a court is sentencing an offender for "driving under OVI suspension" and has the choice of either sentencing the offender to a mandatory jail term or term of house arrest with electronic monitoring, the court must permit the offender to instead choose to be required to attend a safe and responsible driving instructional class, as described below in "**Safe and responsible driving instructional classes**." If the offender, within the previous six years, has been convicted of or pleaded guilty to two or more violations of "driving under OVI suspension" or an equivalent offense, the bill requires the court, in addition to imposing a mandatory jail term of 30 consecutive days, to also sentence the offender to attendance at a safe and responsible driving instructional class. (R.C. 4510.14(B)(1)(a)(ii), (2)(a)(ii), and (3)(e).)

The bill also increases the mandatory minimum fine that the court must impose upon an offender who is once convicted of or pleads guilty to the offense of "driving under OVI suspension" from \$250 to \$500 (R.C. 4510.14(B)(1)(b)).

The bill additionally specifies that the first \$500 of any fine imposed by a court for "driving under OVI suspension" must be distributed as described below in "**Distribution of the \$500 fine**." After the \$500 is distributed, the remaining balance of the fine must be credited as prescribed under current law: 50% of the

remaining fine balance must be deposited in the appropriate Indigent Drivers Alcohol Treatment Fund with the rest of the fine distributed as otherwise required by law. (R.C. 4510.14(D)(2).)

**Driving under financial responsibility law suspension or cancellation**

**Current law**

Continuing law, unchanged by the bill, prohibits any person whose driver's license has been suspended or cancelled under the Financial Responsibility Law from operating any motor vehicle in Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period of suspension or cancellation, except as specifically authorized in the Financial Responsibility Law. In addition, continuing law prohibits a person from operating a motor vehicle in Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period in which the person is required to file and maintain proof of financial responsibility because the person operated a motor vehicle without proof of financial responsibility as prohibited by R.C. 4509.101, unless proof of financial responsibility is maintained with respect to that vehicle. A violation of either of these prohibitions is the offense of "driving under financial responsibility law suspension or cancellation" ("driving under a FR suspension"). (R.C. 4510.16(A) and (B).)

Currently, driving under a FR suspension is a misdemeanor of the first degree, and the court must impose a Class 7 suspension (a definite period of not more than one year) of the offender's driver's license. If the vehicle is registered in the offender's name, the court, in addition to or independent of any other sentence that it imposes upon the offender, must do one of the following (R.C. 4510.16(B)(2)):

(1) Except as otherwise provided in paragraphs (2) and (3), below, order the immobilization for 30 days of the vehicle involved in the offense and the impoundment for 30 days of those license plates;

(2) If, within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of this section or a substantially similar municipal ordinance, order the immobilization for 60 days of the vehicle involved in the offense and impoundment of those license plates for 60 days;

(3) If, within five years of the offense, the offender has been convicted of or pleaded guilty to two or more violations of driving under a FR suspension or a substantially similar municipal ordinance, order the criminal forfeiture to the state of the vehicle involved in the offense. If title to a motor vehicle that is subject to

an order of criminal forfeiture is assigned or transferred and another person has an interest in the car, as discussed in R.C. 4503.234(B)(2) and (3), in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Auto Dealers Association. The proceeds of this fine must be distributed as provided in the Vehicle Forfeiture Law.

The court cannot release a vehicle from immobilization orders unless the court is presented with current proof of financial responsibility with respect to that vehicle.

### **The bill**

The bill additionally requires the court to impose upon an offender who is convicted of or pleads guilty to driving under a FR suspension a fine of \$500, to be distributed as described below in "**Distribution of the \$500 fine.**" The bill also requires the court to allow the offender to choose either a weekend jail term or attendance at a safe and responsible driving instructional class, as described below in "**Safe and responsible driving instructional classes.**" If the offender informs the court that the offender will not be able to pay the fine, the bill directs the court to impose a weekend jail term instead of any fine. (R.C. 4510.16(B)(3).) (See COMMENT.)

### **Failing to produce proof of financial responsibility in certain circumstances**

#### **Current law**

Current law requires a person to whom Ohio has issued a certificate of registration for a motor vehicle or a license to operate a motor vehicle or who is determined to have operated any motor vehicle or permitted the operation in Ohio of a motor vehicle owned by the person to verify the existence of proof of financial responsibility covering the operation of the motor vehicle or the person's operation of the motor vehicle under any of the following circumstances (R.C. 4509.101(A)(3)(a) and (b)):

(1) The person or motor vehicle owned by the person is involved in a traffic accident that requires the filing of an accident report.

(2) The person receives a traffic ticket indicating that proof of the maintenance of financial responsibility was not produced upon the request of a

peace officer or State Highway Patrol trooper who is enforcing Ohio traffic laws or is conducting a motor vehicle inspection.<sup>2</sup>

### **The bill**

The bill requires the Registrar to inform the appropriate law enforcement agency of a person's failure to demonstrate to the Registrar valid proof of financial responsibility when the person or a motor vehicle owned by the person is involved in a traffic accident that requires the filing of an accident report or the person receives a traffic ticket indicating that proof of the maintenance of financial responsibility was not produced upon request in the following circumstances (R.C. 4509.101(D)(9)):

(1) After the Registrar issues an order suspending the license of such a person and the impoundment of the person's certificate of registration and license plates because the person failed to provide proof of the maintenance of financial responsibility at the time of a court appearance for a ticketed violation, upon payment to a traffic violations bureau of a fine and costs for a ticketed violation, or within 15 days of receiving notice of the suspension;

(2) After an administrative hearing requested by a person adversely affected by an order described in paragraph (1), above, in which it is found that the person in question failed to demonstrate to the Registrar valid proof of financial responsibility.

The bill also creates a criminal prohibition if a person fails to demonstrate proof of financial responsibility as described in "**Current law.**" Under the bill, a person who is required to verify the existence of proof of financial responsibility covering the operation of a motor vehicle by that person or another person, as described in "**Current law.**" is prohibited from failing to do so. A violation of this new prohibition is an unclassified misdemeanor. The court must impose upon the offender a fine of \$500 to be distributed as described below in "**Distribution of the \$500 fine.**" Additionally, the court must allow the offender to choose either a weekend jail term or attendance at a safe and responsible driving instructional class that is described below in "**Safe and responsible driving instructional classes.**" If the offender informs the court that the offender will not be able to pay the fine, the court must impose a weekend jail term and may not impose a fine upon the offender. (R.C. 4509.106.) (See **COMMENT.**)

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<sup>2</sup> A person is also required to demonstrate proof of financial responsibility whenever the person is randomly selected by the Registrar of the BMV to provide such verification (R.C. 4509.101(A)(3)(c)).

## Operating a motor vehicle without a valid license

### Current law

Current law generally prohibits a person from operating any 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.<sup>3</sup> A violation of this prohibition is the offense of "operating a motor vehicle without a valid license." (R.C. 4510.12(A) and (B).)

The current penalty for "operating a motor vehicle without a valid license" is as follows (R.C. 4510.12(B)):

(1) If the trier of fact finds that the offender never has held a valid driver's or commercial driver's license issued by Ohio or any other jurisdiction, the offense is a misdemeanor of the first degree.

(2) If the offender's driver's or commercial driver's license or permit was expired at the time of the offense for no more than six months, the offense is a minor misdemeanor, and if the offender's driver's or commercial driver's license or permit was expired at the time of the offense for more than six months, the offense is a misdemeanor of the fourth degree. However, 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 as follows:

(a) A misdemeanor of the third degree if the offender previously was convicted of or pleaded guilty to one violation of operating a motor vehicle without a valid license;

(b) A misdemeanor of the second degree if the offender previously was convicted of or pleaded guilty to two violations of operating a motor vehicle without a valid license;

(c) A misdemeanor of the first degree if the offender previously was convicted of or pleaded guilty to three or more violations of operating a motor vehicle without a valid license.

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<sup>3</sup> Continuing law contains exemptions to this license requirement which are described in R.C. 4507.03, 4507.04, and 4507.05, not in the bill (for example nonresidents, certain military personnel, persons with temporary instruction permits, and persons using farm or road machinery temporarily on the roads).

With respect to license suspensions, current law prohibits the court from imposing a license suspension for a first violation or if more than three years have passed since the offender's last violation. However, if the offender was convicted of or pleaded guilty to one or more violations within the past three years, and if the offender's license was expired for more than six months at the time of the offense, the court must impose a Class 7 suspension (a definite period of not more than one year) of the offender's driver's license. (R.C. 4510.10(C) and (D).)

### **The bill**

The bill makes no change to the penalty for "operating a motor vehicle without a valid license" if the offender has never held a driver's license or if the driver's license has been expired for less than six months. However, if a driver's license has been expired at the time of the offense for more than six months or if the offender has previously been convicted of or pleaded guilty to "operating a motor vehicle without a valid license" or a substantially equivalent municipal ordinance, the bill additionally requires the court to impose upon an offender a fine of \$500, to be distributed as described below in **'Distribution of the \$500 fine,'** and requires the court to allow the offender to choose either a weekend jail term or attendance at a safe and responsible driving instructional class, as described below in **'Safe and responsible driving instructional classes.'** If the offender informs the court that the offender will not be able to pay the fine, the bill directs the court to impose a weekend jail term instead of any fine. (R.C. 4510.12(B)(2).) (See **COMMENT.**)

The bill also eliminates the misdemeanor of the fourth degree penalty when an offender commits the offense of "operating a motor vehicle without a valid license" and the license has been expired for more than six months and the misdemeanor of the third degree penalty when the offender commits the offense of "operating a motor vehicle without a valid license" and previously has been convicted of or pleaded guilty to one violation of "operating a motor vehicle without a valid license" or a substantially equivalent municipal ordinance. It is unclear how these offenses are classified under the bill, but it appears that the effect of these changes is that an offender who is convicted of or pleads guilty to one of these offenses could only be punished with the \$500 fine. (R.C. 4510.12(B)(2)(a) and (b)(i).)

### **Failing to wear a helmet on a motorcycle**

#### **Current law**

Current law prohibits a person who is under the age of 18, or who holds a motorcycle operator's endorsement or license bearing a "novice" designation that is currently in effect as provided in R.C. 4507.13, from operating a motorcycle on

a highway, or being a passenger on a motorcycle, unless wearing a protective helmet on the person's head. Current law also specifies that no other person may be a passenger on a motorcycle operated by such a person unless similarly wearing a protective helmet. The helmet must conform with regulations prescribed and promulgated by the Director of Public Safety.

Generally a violation of these prohibitions is a minor misdemeanor. However, if, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one predicate motor vehicle or traffic offense, a violation is a misdemeanor of the fourth degree.<sup>4</sup> If, within one year of the offense, the offender previously has been convicted of two or more predicate motor vehicle or traffic offenses, a violation is a misdemeanor of the third degree. (R.C. 4511.53.)

### **The bill**

The bill increases from 18 to 25 the age until which a person must wear a protective helmet while operating a motorcycle on a highway or being a passenger on a motorcycle. Consequently, the bill also requires a motorcycle passenger of any age to wear a protective helmet if the operator is under the age of 25. (R.C. 4511.53(B).)

Additionally, the bill specifies that in all cases involving a person who operated a motorcycle or rode as a passenger on a motorcycle and failed to wear a protective helmet when required as described above, notwithstanding the general fines allowed under the Criminal Sentencing Law, the court must impose upon the offender a fine of \$500 and allow the offender to choose either a weekend jail term or attendance at a safe and responsible driving instructional class described below in "**Safe and responsible driving instructional classes**." If the offender informs

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<sup>4</sup> "Predicate motor vehicle or traffic offense" means any of the following: (1) a violation of R.C. 4511.03, 4511.051, 4511.12, 4511.132, 4511.16, 4511.20, 4511.201, 4511.21, 4511.211, 4511.213, 4511.22, 4511.23, 4511.25, 4511.26, 4511.27, 4511.28, 4511.29, 4511.30, 4511.31, 4511.32, 4511.33, 4511.34, 4511.35, 4511.36, 4511.37, 4511.38, 4511.39, 4511.40, 4511.41, 4511.42, 4511.43, 4511.431, 4511.432, 4511.44, 4511.441, 4511.451, 4511.452, 4511.46, 4511.47, 4511.48, 4511.481, 4511.49, 4511.50, 4511.511, 4511.53, 4511.54, 4511.55, 4511.56, 4511.57, 4511.58, 4511.59, 4511.60, 4511.61, 4511.64, 4511.66, 4511.661, 4511.68, 4511.70, 4511.701, 4511.71, 4511.711, 4511.712, 4511.713, 4511.72, 4511.73, 4511.763, 4511.771, 4511.78, or 4511.84, (2) a violation of R.C. 4511.17(A)(2), R.C. 4511.51(A), (B), (C), and (D), or R.C. 4511.74(A), (3) a violation of any provision of R.C. 4511.01 to 4511.76 for which no penalty otherwise is provided in the section that contains the provision violated, (4) a violation of a municipal ordinance that is substantially similar to any section or provision set forth or described in (1), (2), or (3) (R.C. 4511.01(III)).

the court that the offender will be unable to pay the fine, the court must impose a weekend jail term upon the offender and may not impose a jail term. If a fine is imposed, the bill requires the fine to be distributed as described below in "*Distribution of the \$500 fine.*" (R.C. 4511.53(D)(2).) (See COMMENT.)

### *Distribution of the \$500 fine*

The \$500 fine that the bill imposes for one of the violations described above in "*Driving under a suspension or in violation of a license restriction,*" "*Driving under OVI suspension,*" "*Driving under financial responsibility law suspension or cancellation,*" "*Operating a motor vehicle without a valid license,*" and "*Failing to wear a helmet on a motorcycle*" must be distributed as follows (R.C. 4509.106(C), 4510.11(F), 4510.12(E), 4510.14(D)(2), 4510.16(D), and 4511.53(D)):

(1) \$125 must be paid to the county treasurer if the court is a county-operated municipal court or to the city treasurer if the court is not a county-operated municipal court to be credited to a fund to be used upon an order of the court to pay any court expenses the court determines should be paid from the fund.

(2) \$100 must be deposited into the state treasury to the credit of the Traumatic Brain Injury Fund, described below in "*Creation of the Traumatic Brain Injury Fund.*"

(3) \$275 must be deposited into the state treasury to the credit of the Safe and Responsible Driving Instructional Fund, described below in "*Creation of the Safe and Responsible Driving Instructional Fund.*"

### *Creation of the Safe and Responsible Driving Instructional Fund*

The bill creates in the state treasury the Safe and Responsible Driving Instructional Fund to receive the fine dollars described above in "*Distribution of the \$500 fine.*" Money in the fund may only be used to pay the costs of safe and responsible driving instructional classes described below in "*Safe and responsible driving instructional classes.*" (R.C. 4501.40(A).)

### *Safe and responsible driving instructional classes*

As explained above in "*Driving under a suspension or in violation of a license restriction,*" "*Driving under OVI suspension,*" "*Driving under financial responsibility law suspension or cancellation,*" "*Operating a motor vehicle without a valid license,*" and "*Failing to wear a helmet on a motorcycle,*" the bill allows the offender to attend a safe and responsible driving instructional class instead of a weekend jail term if the offender is convicted of or pleads guilty to any of the following offenses: (1) driving under suspension or in violation of a

license restriction, (2) driving under a FR suspension, (3) failing to produce proof of financial responsibility in specified circumstances, (4) operating a motor vehicle without a valid license if a driver's license has been expired at the time of the offense for more than six months or if the offender has previously been convicted of or pleaded guilty to operating a motor vehicle without a valid license or a substantially equivalent municipal ordinance, or (5) in all cases involving a person who operated a motorcycle or rode as a passenger on a motorcycle and failed to wear a protective helmet when required. The purposes of these classes is to assist motor vehicle operators who have committed serious violations of Ohio traffic laws to become better and more responsible drivers through education and counseling. However, the bill provides that a person is not permitted to attend a safe and responsible driving instructional class until the person has paid the \$500 fine described in the above-mentioned sections of the analysis. (R.C. 4501.40(B).)

The bill states that if a person attending a safe and responsible driving instructional class fails to complete the class successfully, the organization holding the class must inform the court that ordered the person to attend the class of that fact. The court, then, must hold a hearing as to the reason why the person did not successfully complete the class, and if the court is not satisfied as to the validity of the reason, the court may order the person to attend the class again or may sentence the offender to the applicable jail term prescribed in the section of the Revised Code under which the offender was charged and sentenced. If the person is required to attend the class again, the person must pay the person's cost of attendance at the class. (R.C. 4501.40(C).)

The bill requires the Registrar, in accordance with R.C. Chapter 119., to adopt rules governing safe and responsible driving instructional classes. These rules must include all of the following (R.C. 4501.40(D)):

- (1) The contents and total number of hours comprising a safe and responsible driving instructional class;
- (2) The criteria an organization must meet in order to be eligible to conduct such a class and a procedure for organizations to be approved by the Bureau of Motor Vehicles to conduct such classes;
- (3) The fee paid to such an organization when it conducts a class;<sup>5</sup>

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<sup>5</sup> *The bill specifies that all fees paid to an organization that conducts safe and responsible driving instructional classes must be paid from the Safe and Responsible Driving Instructional Fund (R.C. 4501.40(D)).*

(4) An administrative fee to cover the expenses the organization incurs in conducting the class, including renting motel or hotel rooms for the attendees, food, meeting room rental, and class materials.

The bill specifies that these classes must be held in locations determined by the Registrar of Motor Vehicles. A political subdivision may apply to the Bureau for approval to conduct safe and responsible driving instructional classes. (R.C. 4501.40(B) and (D).)

### **Creation of the Traumatic Brain Injury Fund**

The bill creates in the state treasury the Traumatic Brain Injury Fund to receive the fine dollars described above in "**Distribution of the \$500 fine.**" Money in the fund may only be used to fund grants made under the Traumatic Brain Injury Grant Program, described below. (R.C. 3304.232.)

### **Traumatic Brain Injury Grant Program**

#### **Current law**

Currently there is a Brain Injury Program in the Rehabilitation Services Commission. Under current law, the Program may do the following, to the extent that funds are available (R.C. 3304.23(B)):

- (1) Identify existing services in Ohio to assist survivors and families of survivors of brain injury;
- (2) Promote the coordination of services for survivors and families of survivors of brain injury;
- (3) Explore options for delivery of services to survivors and families of survivors of brain injury;
- (4) Explore the establishment of a traumatic brain injury incidence reporting system to collect information on the incidence and character of traumatic brain injury in this state;
- (5) Promote practices that will reduce the incidence of brain injury;
- (6) Develop training programs on dealing with brain injury and the special needs of survivors of brain injury;
- (7) Identify sources of available funds for services for survivors and families of survivors of brain injury;

(8) Explore options for the delivery of case management services to residents of this state who are survivors of brain injury;

(9) Provide assistance to assure that services for survivors and families of survivors of brain injury are all of the following:

(a) Designed to enhance the survivor's ability to lead an independent and productive life;

(b) Available within close proximity of the survivor's home;

(c) Provided in the least restrictive environment;

(d) Appropriate to the unique needs of the survivor.

The staff of the Program is also responsible for reporting, biennially, on the incidence of brain injury in Ohio (R.C. 3304.23(D)).

The Program and the Administrator of the Rehabilitation Services Commission is advised by a Brain Injury Advisory Committee. Currently, the committee is comprised of not less than 18 members and not more than 21 members. The members are as follows (R.C. 3304.231(A) and (B)):

(1) Not less than ten and not more than 12 members appointed by the Administrator of the Rehabilitation Services Commission, including all of the following: a survivor of brain injury, a relative of a survivor of brain injury, a licensed physician recommended by the Ohio chapter of the American College of Emergency Physicians, a licensed physician recommended by the Ohio State Medical Association, one other health care professional, a rehabilitation professional, an individual who represents the brain injury association of Ohio, and not less than three nor more than five individuals who must represent the public;

(2) The directors of the Departments of Health, Alcohol and Drug Addiction Services, Mental Retardation and Developmental Disabilities, Mental Health, Job and Family Services, and Highway Safety; the Administrator of Workers' Compensation; the Superintendent of Public Instruction; and the Administrator of the Rehabilitation Services Commission, or their designees.

### **The bill**

The bill creates a Traumatic Brain Injury Grant Program, funded by money in the Traumatic Brain Injury Fund, described above in "**Creation of the Traumatic Brain Injury Fund.**" The program is administered by the program director of the Brain Injury Program who must make grants through the Traumatic

Brain Injury Grant Program. Under the bill, a nonprofit corporation organized under the laws of Ohio whose purpose is to assist survivors and families of survivors of traumatic brain injury by providing community-based brain injury programs is eligible to apply to the program director for a grant from this new grant program. The bill requires the Brain Injury Committee to develop the program and establish all guidelines, requirements, and rules for the program, including the criteria a nonprofit corporation must meet in order to be eligible to receive a grant. A qualifying nonprofit corporation may apply for not more than one grant in any 12-month period, and any grant received may only be used to assist survivors and families of survivors of traumatic brain injury by providing community-based brain injury programs.

The bill specifies that the biennial report prepared by the staff of the Brain Injury Program must also include information regarding the Traumatic Brain Injury Grant Program.

The bill also increases the minimum number of members on the Brain Injury Advisory Committee to 19. The bill does not specify who the additional member must be. (R.C. 3304.23 and 3304.231.)

### **Technical changes**

The bill changes several cross-references in R.C. 4507.164, regarding impoundment of license plates and forfeiture, to conform to changes made by the bill and corrects errors in the existing cross-reference. The bill makes no substantive changes to this section. (R.C. 4507.164(D).)

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## **COMMENT**

The U.S. Supreme Court in *Tate v. Short* (1971), 401 U.S. 395, held that a state "cannot, consistently with the Equal Protection clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine." In *Tate*, the Texas law under which the offender was convicted provided only for fines for such traffic offenses, it required that persons unable to pay be incarcerated for sufficient time to satisfy their fines, at the rate of \$5 per day, which in the offender's case meant an 85-day term.

While the bill does not limit punishment solely to payment of a fine (it also requires the offender to choose either a weekend jail term or attendance at a safe and responsible driving instructional class), it does specify that if an offender is unable to pay the fine, the court must impose a weekend jail term. It is possible that this provision conflicts with *Tate* to the extent that an indigent offender must

serve a weekend jail term and a non-indigent offender may pay a fine and attend a safe and responsible driving instructional class.

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## **HISTORY**

ACTION	DATE
Introduced	11-03-05

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