



*Dennis M. Papp*

***Bill Analysis***  
*Legislative Service Commission*

## **S.B. 141**

126th General Assembly  
(As Introduced)

**Sens. Hottinger, Jacobson, Gardner**

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### **BILL SUMMARY**

- In the provision that requires the suspension of the driver's or commercial driver's license or permit or nonresident operating privilege of a person who is arrested for the offense of state OVI, the offense of state OVUAC, the offense of "having physical control of a vehicle while under the influence" or a violation of an equivalent municipal ordinance, or a municipal OVI ordinance, who is requested to submit to a chemical test of a bodily substance, and who refuses to submit to the test: (1) increases, from six years to 20 years, the "look back period" during which prior refusals are considered in determining the length of the suspension, (2) provides for consideration of prior related convictions in determining the length of the suspension, and (3) increases the length of the suspension as follows: (a) except as provided in clause (3)(b) or (c) of this paragraph, the suspension is a Class B suspension (a period of two years), (b) if the person, within 20 years of the date of the refusal, had refused one previous request to consent to a chemical test or had been convicted of one state OVI, state OVUAC, or equivalent offense, the suspension is for four years, and (c) for each additional refusal to consent to a chemical test during the 20 years prior to the date of the refusal and for each additional conviction of or plea of guilty to state OVI, state OVUAC, or an equivalent offense during that same 20-year period, the suspension described in clause (3)(b) of this paragraph is increased by three years.
- Changes the period of time that must be served under a "refusal suspension" described in the preceding dot point before the person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended may be granted limited driving privileges to be used during the suspension so that the court cannot grant privileges to

such a person during any of the following periods of time: (1) the first 60 days of a refusal suspension imposed upon a person with no prior refusal, and no prior conviction of state OVI, state OVUAC, or an equivalent offense, within the preceding 20 years, or (2) the first year of suspension imposed upon a person with one or more prior refusals, or one or more prior convictions of state OVI, state OVUAC, or an equivalent offense, within the preceding 20 years.

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## CONTENT AND OPERATION

### Vehicle Implied Consent Law

#### Operation of the bill

The bill increases the length of the suspension that is imposed under the Vehicle Implied Consent Law (see "Existing law," below for discussion of this Law) upon a person who is arrested for the offense of state OVI (see **COMMENT 1**), the offense of state OVUAC (see **COMMENT 2**), the offense of "having physical control of a vehicle while under the influence" (see **COMMENT 3**) or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance (see **COMMENT 4**), who is requested to submit to a chemical test of a bodily substance and is read the required notices of possible ramifications of refusing or of taking the test, and who refuses to submit to the test (i.e., an "Implied Consent Law refusal suspension"). It also increases, from six years to 20 years, the "look back period" during which prior refusals are considered in determining the length of the suspension and provides for consideration of prior related convictions in determining the length of the suspension.

Under the bill, the "Implied Consent Law refusal suspension" is for whichever of the following periods applies: (1) except as provided in clause (2) or (3) of this paragraph, the suspension is increased from a Class C (a period of one year) to a Class B suspension (a period of two years) under R.C. 4510.02(B), (2) if the person, *within 20 years of the date of the refusal*, had refused one previous request to consent to a chemical test or had been convicted of or pleaded guilty to one state OVI, state OVUAC, or equivalent offense, the suspension is for four years (existing law requires a suspension of two years for one refusal within the prior six years), and (3) for each additional refusal to consent to a chemical test during the 20 years prior to the date on which the person refused the request to submit to a chemical test and for each additional conviction of or plea of guilty to state OVI, state OVUAC, or an equivalent offense during that same 20-year period, the four-year suspension described in clause (2) must be increased by three years (existing law requires a suspension of three years for two prior refusals

within the prior six years and a suspension of five years for three or more refusals within the prior six years). (R.C. 4511.191(B)(1).)

The bill does not change the existing provisions regarding the immediate effect of the suspension, the termination of the suspension subsequent to a guilty plea or conviction of a related offense resulting from the same incident, or the crediting against a judicial suspension imposed subsequent to a guilty plea or conviction of a related offense resulting from the same incident any time during which the person serves a related "refusal suspension" (see "Existing law," below) (R.C. 4511.191(B)(2) and (D)).

### Existing law

In general. Existing law provides that any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within Ohio or who is in physical control of a vehicle, streetcar, or trackless trolley is deemed to have given consent to a chemical test or tests 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 arrested for the offense of state OVI (see **COMMENT 1**), the offense of state OVUAC (see **COMMENT 2**), the offense of "having physical control of a vehicle while under the influence" (see **COMMENT 3**), or a violation of a substantially equivalent municipal ordinance, or a municipal OVI ordinance (see **COMMENT 4**). The chemical test or tests must be administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle, streetcar, or trackless trolley while committing any of the specified offenses or violations.

Before the arrested person may be requested to submit to the test, the arresting officer must read a statutorily specified form to the person that advises the person as to the ramifications of refusing to submit to a requested test and of taking a requested test and having a prohibited concentration of alcohol in the tested bodily substance. If an arrested person refuses to submit to the requested test, no test is administered. If an arrested person who is read the form refuses to submit to a requested test or, unless the arrest is for the offense of having physical control of a vehicle while under the influence or a violation of a substantially equivalent municipal ordinance, submits to a requested test and the test results indicate a prohibited concentration of alcohol in the tested bodily substance, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately and the suspension lasts at least until the person's initial appearance at which time the person may appeal the suspension (the grounds for the appeal are very limited). The arresting officer must send to

the Registrar of Motor Vehicles (hereafter, the Registrar) a report concerning the matter. (R.C. 4511.191(A), and R.C. 4511.192--not in the bill.)

**Suspension of the license of a person who refuses to submit to a test.**

Upon receipt of the sworn report of a law enforcement officer who arrested a person for any of the offenses or violations specified above in "**In general**" in regard to a person who refused to submit to a chemical test, the Registrar must record the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the officer and the period of the suspension, determined as described below (hereafter, this suspension is referred to as an "Implied Consent Law refusal suspension"). The suspension is subject to appeal under R.C. 4511.197. The suspension is for whichever of the following periods applies: (1) except as provided in clause (2), (3), or (4), the suspension is a Class C suspension (a period of one year, under R.C. 4510.02(B)(3)), (2) if the person, within six years of the date of the refusal, had refused one previous request to consent to a chemical test, the suspension is a Class B suspension (a period of two years, under R.C. 4510.02(B)(2)), (3) if the person, within six years of the date of the refusal, had refused two previous requests to consent to a chemical test, the suspension is a Class A suspension (a period of three years, under R.C. 4510.02(B)(1)), and (4) if the person, within six years of the date of the refusal, had refused three or more previous requests, the suspension is for five years. The suspension is effective immediately from the time the arresting officer serves the notice of suspension upon the arrested person, and any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test does not affect the suspension. The Registrar must terminate the suspension upon receipt of notice that the person has entered a plea of guilty to, or has been convicted after entering a plea of no contest to, state OVI, state OVUAC, or a violation of a municipal OVI ordinance, if the offense resulting in the conviction or plea arose from the same incident that led to the suspension or denial. The Registrar must credit against any judicial suspension of a person's license, permit, or privilege imposed as a result of the person's conviction of state OVI, state OVUAC, or a violation of a municipal OVI ordinance (see **COMMENT 5**; if a person is convicted of state OVI, state OVUAC, or a violation of a municipal OVI ordinance, the sentencing court is required to suspend the person's license, permit, or privilege for a specified period of time, and the suspension is separate from, and independent of, the suspension described in this paragraph) any time during which the person serves a related suspension imposed as described in this paragraph. (R.C. 4511.191(B) and (D).)

**Suspension of the license of a person who takes a test and has a prohibited concentration of alcohol in the tested substance.** Upon receipt of the sworn report of a law enforcement officer who arrested a person for any of the offenses or violations specified above in "**In general**" in regard to a person who

submitted to a chemical test and whose test results indicate that the bodily substance tested contained at least the concentration of alcohol specified as being prohibited in the offense of state OVI (see **COMMENT 1**), the Registrar must record the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the officer and the period of the suspension, determined as described below (hereafter, this suspension is referred to as an "Implied Consent Law prohibited concentration suspension"). The suspension is subject to appeal under R.C. 4511.197. The suspension does not apply to, and cannot be imposed upon, a person arrested for the offense of having physical control of a vehicle while under the influence or a substantially equivalent municipal ordinance who submits to a test. The suspension is for whichever of the following periods applies: (1) except as provided in clause (2), (3), or (4), the suspension is a Class E suspension (a period of three months under R.C. 4510.02(B)(5)), (2) if, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to one state OVI, state OVUAC, or equivalent offense, the suspension is a Class C suspension (a period of one year under R.C. 4510.02(B)(3)), (3) if, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to two offenses listed in clause (1), the suspension is a Class B suspension (a period of two years under R.C. 4510.02(B)(2)), and (4) if, within six years of the date the test was conducted, the person has been convicted of or pleaded guilty to more than two offenses listed in clause (1), the suspension is a Class A suspension (a period of three years under R.C. 4510.02(B)(1)). The suspension is effective immediately from the time the arresting officer serves the notice of suspension upon the arrested person, and any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test does not affect the suspension. The Registrar must terminate the suspension upon receipt of notice that the person has entered a plea of guilty to, or that the person has been convicted after entering a plea of no contest to, state OVI, state OVUAC, or a violation of a municipal OVI ordinance, if the offense resulting in the conviction or plea arose from the same incident that led to the suspension or denial. The Registrar must credit against any judicial suspension of a person's license, permit, or privilege imposed as a result of the person's conviction of state OVI, state OVUAC, or a violation of a municipal OVI ordinance (see **COMMENT 5**; if a person is convicted of state OVI, state OVUAC, or a violation of a municipal OVI ordinance, the sentencing court is required to suspend the person's license, permit, or privilege for a specified period of time, and the suspension is separate from, and independent of, the suspension described in this paragraph), any time during which the person serves a related suspension imposed as described in this paragraph. (R.C. 4511.191(C) and (D).)

**Appeal of suspension; reinstatement at end of suspension period.**

Existing law provides a person whose license is suspended under either of the

above-described provisions of the Vehicle Implied Consent Law with a qualified right to appeal the suspension. The person may appeal the suspension at the initial appearance on the charge resulting from the arrest or within the period ending 30 days after the initial appearance on that charge, in the court in which the person will appear on the charge. The appeal itself does not stay the operation of the suspension. A continuance may be granted, but neither the request for, nor the granting of, a continuance stays the suspension, unless the court specifically grants a stay. The scope of the appeal is limited to determining whether any of the following conditions have not been met: (1) whether the arresting law enforcement officer had reasonable ground to believe the arrested person was committing the offense for which he or she was arrested and whether the arrested person was in fact placed under arrest, (2) whether the officer requested the person to submit to the chemical test or tests, (3) whether the officer informed the person of the consequences of refusing to be tested or of submitting to the test or tests, (4) whether the arrested person refused to submit to the chemical test or tests requested by the officer, or whether the arrest was for state OVI, state OVUAC, or a municipal OVI ordinance and, if it was, whether the test results indicate that the bodily substance tested contained a concentration of alcohol specified as being prohibited under the offense of state OVI at the time of the alleged offense. (R.C. 4511.197--not in the bill.)

If a person's license is suspended under either of the above-described provisions of the Vehicle Implied Consent Law, at the end of a suspension period, upon the request of the person, the Registrar must return the license or permit to the person if the person otherwise is not subject to a suspension, if the person shows that he or she has proof of financial responsibility, a policy of liability insurance in effect that meets specified minimum standards, or proof that he or she is able to respond in damages in an amount at least equal to specified minimum amounts, and if the person pays a license reinstatement fee of \$425 to be deposited in the state treasury and credited to various specified funds. (R.C. 4511.191(F).)

**Limited driving privileges during an "Implied Consent Law refusal suspension"**

**Existing law**

**In general.** Existing law provides that, unless expressly authorized by a Revised Code section, a court may not grant limited driving privileges during any suspension imposed by the Bureau of Motor Vehicles. To obtain limited driving privileges during a Bureau-imposed suspension, the person under suspension may file a petition in a specified court of record. If a court grants limited driving privileges as described in this division, the privileges may be for any of the limited purposes described below. Existing law also provides that, unless expressly prohibited by R.C. 2919.22, R.C. 4510.13, or any other Revised Code section, a court may grant limited driving privileges for any purpose described below during

any suspension imposed by the court. In granting the privileges, the court must specify the purposes, times, and places of the privileges and may impose any other reasonable conditions on the person's driving of a motor vehicle. The privileges may be for any of the following limited purposes: (1) occupational, educational, vocational, or medical purposes, (2) taking the driver's or commercial driver's license examination, (3) attending court-ordered treatment, or (4) during the suspension of the temporary instruction permit or probationary driver's license of a person under 18, for practicing driving with the person's parent, guardian, or other custodian.

When the use of an immobilizing or disabling device is not otherwise required by law, the court, as a condition of granting privileges, generally may require that the person's vehicle be equipped with an immobilizing or disabling device. When the use of restricted license plates is not otherwise required by law, the court, as a condition of granting limited driving privileges, generally may require that the person's vehicle be equipped with restricted license plates. Before granting limited driving privileges, the court must require the offender to provide proof of financial responsibility. (R.C. 4510.021--not in the bill.)

**For a person whose license has been suspended under an "Implied Consent Law refusal suspension"**. Existing law provides that a person whose driver's or commercial driver's license or permit of nonresident operating privilege has been suspended under an "Implied Consent Law refusal suspension" may file a petition requesting limited driving privileges during the suspension in the court that has jurisdiction over the place of arrest and that, subject to specified exceptions, the court may grant the person the privileges during the period of the suspension. The court cannot grant such a person privileges for employment as a driver of commercial motor vehicles if the person otherwise is disqualified from operating a commercial motor vehicle. The court cannot grant privileges to such a person who, within the preceding six years, has refused three previous requests to consent to a chemical test of a bodily substance (but see the next sentence). Additionally, the court cannot grant privileges to such a person during any of the following periods of time: (1) the first 30 days of suspension imposed under R.C. 4511.191(B)(1)(a) upon a person with no prior refusal within the preceding six years, (2) the first 90 days of suspension imposed under R.C. 4511.191(B)(1)(b) upon a person with one prior refusal within the preceding six years, (3) the first year of suspension imposed under R.C. 4511.191(B)(1)(c) upon a person with two prior refusals within the preceding six years, or (4) the first three years of suspension imposed under R.C. 4511.191(B)(1)(d) upon a person with three or more prior refusals within the preceding six years. (R.C. 4510.13(A)(3), (A)(4), (A)(6), and (B).)

### Operation of the bill

The bill changes the period of time that must be served under the suspension before a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under an "Implied Consent Law refusal suspension" may be granted limited driving privileges to be used during the suspension (see "Existing law," below). Because this provision is linked to the Revised Code provisions under which the suspension is imposed, the bill, in effect, also incorporates the changes it makes to those provisions into the limited driving privileges provision.

Under the bill, the court cannot grant privileges to such a person during any of the following periods of time: (1) the first 60 days of suspension (30 days under existing law) imposed under R.C. 4511.191(B)(1)(a) upon a person with no prior refusal, and no prior conviction of state OVI, state OVUAC, or an equivalent offense, within the preceding 20 years, or (2) the first year of suspension imposed under R.C. 4511.191(B)(1)(b) upon a person with one or more prior refusals, or one or more prior convictions of state OVI, state OVUAC, or an equivalent offense, within the preceding 20 years. The bill does not change the existing provisions that prohibit a court from granting such a person privileges for employment as a driver of commercial motor vehicles if the person otherwise is disqualified from operating a commercial motor vehicle or from granting privileges to such a person who, within the preceding six years, has refused three previous requests to consent to a chemical test of a bodily substance. (R.C. 4510.13(A)(3), (A)(4), (A)(6), and (B).)

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### COMMENT

1. Existing R.C. 4511.19(A) contains the following prohibitions, generally referred to as the offense of "operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them" or "state OVI" (R.C. 4511.19(A)--not in the bill):

(a) It prohibits a person from operating any vehicle, streetcar, or trackless trolley within Ohio, if, at the time of the operation, any of the following apply: (i) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (ii) the person has a concentration of .08 of one per cent or more but less than .17 of one per cent by weight per unit volume of alcohol in the person's whole blood, (iii) the person has a concentration of .096 of one per cent or more but less than .204 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (iv) the person has a concentration of .08 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath, (v) the person has a concentration of .11 of one gram or more but

less than .238 of one gram by weight of alcohol per 100 milliliters of the person's urine, (vi) the person has a concentration of .17 of one per cent or more by weight per unit volume of alcohol in the person's whole blood, (vii) the person has a concentration of .204 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (viii) the person has a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (ix) the person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine.

(b) It prohibits a person who, within 20 years of the conduct described in clause (ii) of this paragraph, previously has been convicted of or pleaded guilty to state OVI, state OVUAC, or a municipal OVI offense, from doing both of the following: (i) operating any vehicle, streetcar, or trackless trolley within Ohio while under the influence of alcohol, a drug of abuse, or a combination of them, and (ii) subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in clause (i) of this paragraph, being asked by a law enforcement officer to submit to a chemical test or tests under the Vehicle Implied Consent Law contained in R.C. 4511.191, and being advised by the officer in accordance with R.C. 4511.192 of the consequences of the person's refusal or submission to the test or tests, refusing to submit to the test or tests.

2. Existing R.C. 4511.19(B), generally referred to as the offense of "operating a vehicle after underage alcohol consumption" or "state OVUAC," prohibits a person under 21 years of age from operating any vehicle, streetcar, or trackless trolley within Ohio, if, at the time of the operation, any of the following apply (R.C. 4511.19(B)--not in the bill): (a) the person has a concentration of at least .02 of one per cent but less than .08 of one per cent by weight per unit volume of alcohol in the person's whole blood, (b) the person has a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (c) the person has a concentration of at least .02 of one gram but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath, or (d) the person has a concentration of at least .028 of one gram but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine.

3. Existing R.C. 4511.194, generally referred to as the offense of "having physical control of a vehicle while under the influence," prohibits a person from being in "physical control" (defined as being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device) of a vehicle, streetcar, or trackless trolley while under the influence of alcohol, a drug of abuse, or a combination of them or while the person's whole blood, blood serum or plasma, breath, or urine contains at least the

concentration of alcohol specified in R.C. 4511.19(A)(1)(b), (c), (d), or (e) (R.C. 4511.194--not in the bill).

4. Existing R.C. 4511.181(C) defines "municipal OVI ordinance" and "municipal OVI offense," for purposes of R.C. 4511.181 to 4511.197, as any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol in the whole blood, blood serum or plasma, breath, or urine (R.C. 4511.181(C)--not in the bill).

5. Existing law provides for the suspension, by the sentencing court, of the driver's or commercial driver's license or permit or nonresident operating privilege of a person who is convicted of or pleads guilty to state OVI, state OVUAC, or a violation of a municipal OVI ordinance, as follows:

(a) Existing R.C. 4511.19(G) provides that, if a person is convicted of or pleads guilty to state OVI, the sentencing court must suspend the person's license, permit, or privilege as follows (R.C. 4511.19(G)--not in the bill): (i) except as otherwise provided in clauses (ii) to (v) of this paragraph, the court must impose a Class five suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(5), which is a definite period of six months to three years, (ii) if the offender previously has been convicted one time within the preceding six years of state OVI, state OVUAC, or an equivalent offense, the court must impose a Class four suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(4), which is a definite period of one to five years, (iii) if the offender previously has been convicted two times within the preceding six years of state OVI, state OVUAC, or an equivalent offense, the court must impose a Class three suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(3), which is a definite period of two to ten years, (iv) subject to clause (v) of this paragraph, if the offender previously has been convicted three or more times within the preceding six years of state OVI, state OVUAC, or an equivalent offense, the court must impose a Class two suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(2), which is a definite period of three years to life, and (v) if the offender previously has been convicted of state OVI in circumstances in which that offense was a felony, the court must impose a Class two suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(2), which is a definite period of three years to life (R.C. 4511.19(G)--not in the bill).

(b) Existing R.C. 4511.19(H) provides that, if a person is convicted of or pleads guilty to state OVUAC, the sentencing court must suspend the person's license, permit, or privilege as follows (R.C. 4511.19(H)--not in the bill): (i)

except as otherwise provided in clause (ii) of this paragraph, the court must impose a Class six suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(6), which is a definite period of three months to two years, and (ii) if, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more offenses of state OVI, state OVUAC, or an equivalent offense, the court must impose a Class four suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(4), which is a definite period of one to five years.

(c) Existing R.C. 4510.07 provides that the court imposing a sentence upon an offender for any violation of a municipal ordinance that is substantially equivalent to a violation of R.C. 2903.06 or 2907.24, *or for any violation of a municipal OVI ordinance* also must impose a suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(B) that is equivalent in length to the suspension required for a violation of R.C. 2903.06 or 2907.24 or R.C. 4511.19(A) or (B) under similar circumstances (R.C. 4510.07--not in the bill).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-03-05	p. 469

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