Ohio Legislative Service Commission

Bill Analysis

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(As Reported by H. Civil and Commercial Law)

Reps. Book, Luckie, Phillips

BILL SUMMARY

- Replaces current law's provisions that authorize the skills test for applicants for a commercial driver's license to be administered by any person, state or out-of-state agency, or local government agency, department, or instrumentality with provisions that authorize the skills test to be administered by any entity licensed by the Department of Public Safety for that purpose and modifies the fee requirements for the administration of the test.

- Prohibits any person from retaining a commercial driver's license if such retention would violate federal law.

- Prohibits the Registrar of Motor Vehicles from issuing, renewing, upgrading, or transferring a hazardous materials endorsement for a commercial driver's license to any individual to operate a commercial motor vehicle transporting hazardous materials in commerce unless the Registrar has received from the Transportation Security Administration a determination that the individual does not pose a security risk warranting denial of the endorsement.

- Specifies that existing law's prohibitions apply to persons who hold a commercial driver's license or operate a motor vehicle for which a commercial driver's license is required and expands the types of acts that such a license holder or vehicle operator is prohibited from committing to include failing to stop after an accident in violation of continuing law, driving a motor vehicle in violation of the OVI statute or municipal ordinance, and refusing to submit to a test under the implied consent statute.

- Expands the causes for disqualification of any commercial driver's license holder or commercial motor vehicle operator from operating a commercial motor vehicle to

include a license suspension for operating a vehicle under the influence of alcohol or drugs.

- Lengthens the period of disqualification for a driver upon a conviction for a first violation of an out-of-service order from 90 to 180 days and for a second violation in a ten-year period of an out-of-service order from one to two years.

- Provides for the disqualification from operating a commercial motor vehicle for a specified period to be imposed consecutively to a separate disqualification upon conviction of two or three serious traffic violations arising from separate incidents occurring in a three-year period.

- In regard to an offense involving the operation of a commercial motor vehicle, generally prohibits a court from modifying any record if the resulting record would no longer reflect the operation of a commercial motor vehicle.

- Reduces from ten to seven days the time within which a county court judge, mayor of a mayor's court, or clerk of a court of record is required to prepare and forward to the Bureau of Motor Vehicles and the Department of Public Safety an abstract of the court record of a conviction or bail forfeiture in relation to traffic law violations.

- Expands the exceptions to the prescribed lengths of vehicles operated upon public highways, streets, bridges, and culverts to include nonproperty carrying devices or components that do not extend more than 24 inches beyond the vehicle's rear and are needed for loading or unloading.

- Provides that pre-trial diversion programs are not applicable to persons who are accused of an offense while operating a commercial motor vehicle or who hold a commercial driver's license and are accused of any offense, if conviction of the offense would disqualify the person from operating a commercial motor vehicle or subject the person to any other sanction under the Commercial Driver's Licensing Law.

- Expands the conditions for an offender to be eligible for intervention in lieu of conviction to include a condition that the offender is not charged with an offense that would result in the offender being disqualified from operating a commercial motor vehicle or would subject the offender to any other sanction under the Commercial Driver's Licensing Law.

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CONTENT AND OPERATION

Rules for qualification and testing of applicants for commercial driver's license; skills testing

Existing law

The Commercial Driver's Licensing (CDL) Law requires the Registrar of Motor Vehicles (hereafter Registrar), subject to approval by the Director of Public Safety, to adopt rules conforming with applicable standards adopted by the Federal Motor Carrier Safety Administration (FMCSA) as regulations under 49 U.S.C.A. 31301 to 31317. The rules must establish requirements for the qualification and testing of

persons applying for a "commercial driver's license"[1] that are in addition to other requirements established by the CDL Law. Existing law requires that, except as described below, the Highway Patrol or any other employee of the Department of Public Safety (DPS) the Registrar authorizes must supervise and conduct the testing of persons applying for a commercial driver's license. (R.C. 4506.09(A).)

The Director may adopt rules, in accordance with the Administrative Procedure Law and applicable requirements of the FMCSA, authorizing a "skills test" to be administered by any person, by an Ohio agency or an agency of another state, or by an agency, department, or instrumentality of local government. Each party authorized to administer the skills test may charge a maximum divisible fee of $85 for each skills test given as part of a commercial driver's license examination. The fee consists of not more than $20 for the pre-trip inspection portion of the test, not more than $20 for the off-road maneuvering portion of the test, and not more than $45 for the on-road portion of the test. Each such party may require an appointment fee in the same manner provided in the CDL Law, except that the maximum amount such a party may require as an appointment fee is $85. The skills test administered by another party must be the same as otherwise would be administered by the state of Ohio. The other party must enter into an agreement with the Director that, without limitation, does all of the following (R.C. 4506.09(B)):

(1) Allows the Director or the Director's representative and the FMCSA or its representative to conduct random examinations, inspections, and audits of the other party without prior notice;

(2) Requires the Director or the Director's representative to conduct on-site inspections of the other party at least annually;

(3) Requires that all examiners of the other party meet the same qualification and training standards as examiners of DPS, to the extent necessary to conduct skills tests in the manner required by 49 C.F.R. 383.110 through 383.135;

(4) Requires either that state employees take, at least annually and as though the employees were test applicants, the tests actually administered by the other party, that the Director test a sample of drivers who were examined by the other party to compare the test results, or that state employees accompany a test applicant during an actual test;

(5) Reserves to this state the right to take prompt and appropriate remedial action against "testers" of the other party if the other party fails to comply with

[1] See **COMMENT** 1 for definitions of terms in this analysis that are in quotation marks.

standards of Ohio or federal standards for the testing program or with any other terms of the contract.

Operation of the bill

The bill replaces the above provisions of existing law pertaining to the administration of the skills test with licensing provisions described below. Under the bill, the Director may authorize the skills test to be administered by any entity licensed by the DPS for the purpose. The Director must adopt rules in accordance with the Administrative Procedure Law setting forth the requirements for obtaining and maintaining the license. At a minimum, the rules must do all of the following (R.C. 4506.09(B)):

(1) Establish the fee that may be charged by a licensee for administration of each portion of the skills test, provided that the total fee cannot exceed $85;

(2) Require the licensee to submit to random examinations, inspections, and audits by DPS without prior notice;

(3) Establish the qualification and training standards that must be met by all examiners employed by a licensee;

(4) Include any other provisions considered necessary by the DPS to ensure that the skills tests are administered in accordance with federal statutes and regulations.

The Highway Patrol or any other employee of DPS the Registrar authorizes must supervise and conduct the testing of persons applying for a commercial driver's license as in existing law, except as provided in the bill as described above (R.C. 4506.09(A)).

Retention of commercial driver's license

Existing law provides that notwithstanding any provision of the Revised Code, the Bureau of Motor Vehicles (BMV) is prohibited from issuing or renewing a commercial driver's license if issuance or renewal of the license would violate federal law. The bill additionally prohibits any person from retaining a commercial driver's license if the retention of the license would violate federal law. (R.C. 4506.101.)

Hazardous materials endorsement

Continuing law requires commercial drivers' licenses to be issued in specified classes and requires any applicable "endorsements" and restrictions to be included. One of the applicable endorsements is H, which authorizes the "driver" to drive a vehicle transporting "hazardous materials" in an amount requiring placarding. (R.C. 4506.12(A) and (C)(1)--not in the bill.)

The bill prohibits the Registrar from issuing, renewing, upgrading, or transferring a hazardous materials endorsement for a commercial driver's license to any individual authorizing that individual to operate a "commercial motor vehicle" transporting a hazardous material in commerce unless the Registrar has received from the Transportation Security Administration (TSA) a determination indicating that the individual does not pose a security risk warranting denial of the endorsement. Immediately upon receiving a determination from the TSA that an individual poses a security risk, the Registrar must revoke any existing hazardous materials endorsement and refuse to issue a hazardous materials endorsement for the individual named as a security risk. Within 15 days of receiving any determination from the TSA indicating the status of an individual's security risk, the Registrar must notify the "commercial driver license information system" of the results of the security assessment. The Registrar must order any revocation described above without a hearing. Any person adversely affected by the order may request an administrative hearing before the Registrar. The scope of the hearing must be limited to whether the BMV properly revoked the hazardous material endorsement after receiving notification from the TSA and cannot include consideration of whether the TSA acted properly in sending the notification. (R.C. 4506.131.)

Prohibited acts

Existing law

The CDL Law prohibits any person from doing any of the following and makes a violation of the prohibition a misdemeanor of the first degree (R.C. 4506.15):

(1) "Drive" a commercial motor vehicle while having a measurable or detectable amount of alcohol or of a controlled substance in the person's blood, breath, or urine;

(2) Drive a commercial motor vehicle while having an "alcohol concentration" of four-hundredths of one per cent or more by whole blood or breath;

(3) Drive a commercial motor vehicle while having an alcohol concentration of forty-eight-thousandths of one per cent or more by blood serum or blood plasma;

(4) Drive a commercial motor vehicle while having an alcohol concentration of fifty-six-thousandths of one per cent or more by urine;

(5) Drive a motor vehicle while under the influence of a "controlled substance;"

(6) Use a motor vehicle in the commission of a "felony;"

(7) Refuse to submit to a test under R.C. 4506.17 (test of a person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the person's alcohol concentration or the presence of any controlled substance or a metabolite of a controlled substance);

(8) Operate a commercial motor vehicle while the person's commercial driving privileges are revoked, suspended, canceled, or disqualified;

(9) Cause a "fatality" through the negligent operation of a commercial motor vehicle, including, but not limited to, the offenses of aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter;

(10) Use a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance or the possession with intent to manufacture, distribute, or dispense a controlled substance;

(11) Drive a commercial motor vehicle in violation of any provision of R.C. 4511.61 to 4511.63 (stop signs at dangerous highway crossings over railroad tracks; stopping at railroad grade crossings; stopping at grade crossings) or any federal or local law or ordinance pertaining to railroad-highway grade crossings;

(12) Violate any prohibition described in (1) to (11), above, while transporting hazardous materials.

Operation of the bill

The bill prohibits any person *who holds a commercial driver's license or operates a motor vehicle for which a commercial driver's license is required* (added by the bill) from doing any of the above listed acts as modified by the bill (see below) and retains the first degree misdemeanor penalty. The bill adds new prohibitions and renumbers the prohibitions in paragraphs (6) through (11) in "**Existing law**," above, as follows (new prohibitions and new numbers are italicized):

(6) Drive a motor vehicle in violation of R.C. 4511.19 (operating a vehicle under the influence of alcohol or drugs--OVI) or a "municipal OVI ordnance" (see **COMMENT** 2 for definition);

(7) Use a motor vehicle in the commission of a felony;

(8) Refuse to submit to a test under R.C. 4506.17 *or 4511.191 (implied consent law)*;

(9) Operate a commercial motor vehicle while the person's commercial driving privileges are revoked, suspended, canceled, or disqualified;

(10) Cause a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the offenses of aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter;

(11) Fail to stop after an accident in violation of R.C. 4549.02 to 4549.03;

(12) Drive a commercial motor vehicle in violation of any provision of R.C. 4511.61 to 4511.63 or any federal or local law or ordinance pertaining to railroad-highway grade crossings;

(13) Use a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance or the possession with intent to manufacture, distribute, or dispense a controlled substance.

The bill modifies and relocates the prohibition described in (12) in "**Existing law**," above, to the disqualification provisions described below in paragraph (3) in "**Operation of the bill**" under "**Disqualification of commercial driver's license holder from operating a commercial motor vehicle**." (R.C. 4506.15.)

Disqualification for violation of out-of-service order

Existing law requires the Registrar to "disqualify" any person who is found to have been convicted of a violation of an "out-of-service order" as follows: (1) if the person has not been convicted previously of a violation of an out-of-service order, the period of disqualification is 90 days, or (2) if, during any ten-year period, the driver is convicted of a second violation of an out-of-service order in an incident separate from the incident that resulted in the first violation, the period of disqualification is one year. The bill lengthens the period of disqualification in (1), above, to 180 days and the period of disqualification in (2), above, to two years. (R.C. 4506.16(A)(1) and (2).)

Disqualification of commercial driver's license holder from operating a commercial motor vehicle

Existing law

Existing law requires the Registrar to disqualify any holder of a commercial driver's license, or any operator of a commercial motor vehicle for which a commercial driver's license is required, from operating a commercial motor vehicle as follows (R.C. 4506.16(D)):

(1) Upon a first "conviction" for a violation of any provision of paragraphs (2) to (9) in "**Existing law**" under "**Prohibited acts**," above, or of R.C. 4511.19 (operating a vehicle while under the influence of alcohol or drugs--OVI) or R.C. 4549.02 to 4549.03

(failing to stop after an accident), or a similar law of another state or a "foreign jurisdiction," one year;

(2) Upon a second conviction for a violation described in (1), above, or any combination of such violations arising from two or more separate incidents, the person must be disqualified for life or for any other period of time as determined by the United States Secretary of Transportation and designated by the Director of Public Safety by rule;

(3) Upon a first conviction for a violation of paragraph (12) in "**Existing law**" under "**Prohibited acts**," above, or a similar law of another state or a foreign jurisdiction, three years;

(4) Upon conviction of a violation of paragraph (10) in "**Existing law**" under "**Prohibited acts**," above, or a similar law of another state or a foreign jurisdiction, the person must be disqualified for life;

(5) Upon conviction of two "serious traffic violations" involving the operation of a motor vehicle by the person and arising from separate incidents occurring in a three-year period, the person must be disqualified for 60 days if the conviction results in the suspension, cancellation, or revocation of the holder's commercial driver's license or noncommercial motor vehicle driving privileges;

(6) Upon conviction of three serious traffic violations involving the operation of a motor vehicle by the person and arising from separate incidents occurring in a three-year period, the person must be disqualified for 120 days if the conviction results in the suspension, cancellation, or revocation of the holder's commercial driver's license or noncommercial motor vehicle driving privileges.

(7) Upon a first conviction involving the operation of a commercial motor vehicle in violation of any provisions of R.C. 4511.61 to 4511.63 (stop signs at dangerous highway crossings over railroad tracks; stopping at railroad grade crossings; stopping at grade crossings) or a similar law of another state or foreign jurisdiction, not less than 60 days;

(8) Upon a second conviction of a violation described in (7), above, within three years of the first such conviction, not less than 120 days;

(9) Upon a third or subsequent conviction of a violation described in (7), above, within three years of the first such conviction, not less than one year;

(10) Upon receiving notification from the FMCSA, the Registrar must disqualify any commercial motor vehicle driver whose driving is determined to constitute an

imminent hazard as defined under federal motor carrier safety regulation 49 C.F.R. 383.52.

Existing law further provides that conviction of a violation for which disqualification is required may be evidenced by any of the following: (a) a judgment entry of a court of competent jurisdiction in Ohio or any other state, (b) an administrative order of a state agency of Ohio or any other state having statutory jurisdiction over commercial drivers, (c) a computer record obtained from or through the commercial driver's license information system, or (d) a computer record obtained from or through a state agency of Ohio or any other state having statutory jurisdiction over commercial drivers or the records of commercial drivers (R.C. 4506.16(E)).

Operation of the bill

The bill modifies the causes for disqualification as described above in "**Existing law**" in the following manner (paragraph numbers correspond with the paragraph numbers in "**Existing law**"; changes are italicized) (R.C. 4506.16(D)):

(1) Upon a first conviction for a violation of any provision of paragraphs (2) to (5) in "**Existing law**" or paragraphs (6) to (12) in "**Operation of the bill**" under "**Prohibited acts**," above, or a similar law of another state or a foreign jurisdiction, *or upon a first suspension imposed under R.C. 4511.191 (implied consent to chemical test) or a similar law of another state or foreign jurisdiction*, one year;

(2) Upon a second conviction for a violation described in the preceding paragraph (1), *or upon a second suspension imposed under R.C. 4511.191 or a similar law of another state or foreign jurisdiction,* or any combination of such violations arising from two or more separate incidents, the person must be disqualified for life or for any other period of time as determined by the United States Secretary of Transportation and designated by the Director of Public Safety by rule;

(3) Upon a first conviction for any of the following violations while transporting hazardous materials, three years: (a) a violation of any provision of paragraphs (2) to (5) in "**Existing law**" or paragraphs (6) to (12) in "**Operation of the bill**" under "**Prohibited acts**," above, or (b) a similar law of another state or a foreign jurisdiction.

(4) Upon conviction of a violation of any provision of paragraph (13) in "**Operation of the bill**" under "**Prohibited acts**," above, or a similar law of another state or a foreign jurisdiction, the person must be disqualified for life (no change from existing law other than the cross-referenced division number);

(5)*(a) Upon conviction of two "serious traffic violations" involving the operation of a commercial motor vehicle by the person and arising from separate incidents occurring in a three-*

year period, the person must be disqualified for 60 days, which disqualification must be imposed consecutively to any other separate disqualification imposed under this paragraph or paragraph (5)(b), (6)(a), or (6)(b), below;

(b) Upon conviction of two serious traffic violations involving the operation of a *vehicle other than a commercial* motor vehicle by the person and arising from separate incidents occurring in a three-year period, the person must be disqualified for 60 days if the conviction results in the suspension, cancellation, or revocation of the holder's commercial driver's license or noncommercial motor vehicle driving privileges*, which disqualification must be imposed consecutively to any other separate disqualification imposed under paragraph (5)(a), above, this paragraph, or paragraph (6)(a) or (b), below;*

(6)*(a) Upon conviction of three serious traffic violations involving the operation of a commercial motor vehicle by the person and arising from separate incidents occurring in a three-year period, the person must be disqualified for 120 days, which disqualification must be imposed consecutively to any other separate disqualification imposed under paragraph (5)(a) or (b), above, this paragraph, or paragraph (6)(b), below*;

(b) Upon conviction of three serious traffic violations involving the operation of a *vehicle other than a commercial* motor vehicle by the person and arising from separate incidents occurring in a three-year period, the person must be disqualified for 120 days if the conviction results in the suspension, cancellation, or revocation of the holder's commercial driver's license or noncommercial motor vehicle driving privileges*, which disqualification must be imposed consecutively to any other separate disqualification imposed under this paragraph or paragraph (5)(a), (5)(b), or (6)(a), above.*

Note: No changes are made to paragraphs (7), (8), or (9) in "**Existing law**," above.

(10) Upon receiving notification from the FMCSA, the Registrar *immediately, prior to any hearing,* must disqualify any commercial motor vehicle driver whose driving is determined to constitute an imminent hazard as defined under federal motor carrier safety regulation 49 C.F.R. 383.52.

Conviction of a violation for which disqualification is required *includes conviction under any municipal ordinance that is substantially similar to any section of the Revised Code that is set forth in R.C. 4506.16(D), as modified by the bill* (added by the bill), and may be evidenced by a judgment entry, administrative order, or computer record described in (a) to (d) in the last paragraph under "**Existing law**," above (R.C. 4506.16(E)).

Modification of record

In regard to an offense involving the operation of a commercial motor vehicle, the bill prohibits any court from modifying any record, or consenting to the modification of any record, if the resulting record would no longer reflect the operation of a commercial motor vehicle, unless a determination of the facts indicates that the person was not operating a commercial motor vehicle at the time of the offense (R.C. 4506.161).

Implied consent to tests--effect of refusal to submit to test

Existing law

Under the CDL Law, any person who holds a commercial driver's license or operates a commercial motor vehicle requiring a commercial driver's license within Ohio must be deemed to have given consent to a test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the person's alcohol concentration or the presence of any controlled substance or a metabolite of a controlled substance. A person requested to submit to such a test must be advised by the peace officer requesting the test that a refusal to submit to the test will result in the person immediately being placed "out-of-service" for a period of 24 hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year, and that the person is required to surrender the person's commercial driver's license to the peace officer. (R.C. 4506.17(A) and (C).)

Existing law provides that if a person refuses to submit to a test after being warned as described in the preceding paragraph or submits to a test that discloses the presence of a controlled substance or a metabolite of a controlled substance, *an alcohol concentration of four-hundredths of one per cent or more by whole blood or breath, an alcohol concentration of forty-eight-thousandths of one per cent or more by blood serum or blood plasma, or an alcohol concentration of fifty-six-thousandths of one per cent or more by urine*, the person immediately must surrender the person's commercial driver's license to the peace officer. The peace officer must forward the license, together with a sworn report, to the Registrar certifying that the test was requested and that the person either refused to submit to testing or submitted to a test that disclosed the presence of a controlled substance or a metabolite of a controlled substance or a prohibited alcohol concentration. (R.C. 4506.17(D).)

Upon receipt of a sworn report from a peace officer as described in the preceding paragraph, the Registrar must disqualify the person named in the report from driving a commercial motor vehicle: (1) for one year upon a first incident or (2) for life or such lesser period as prescribed by the Registrar's rule upon an incident of refusal or of a

prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance after one or more previous incidents of either refusal or of a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance. (R.C. 4506.17(E).)

Operation of the bill

Under the bill if a person refuses to submit to a test after being warned as described above or submits to a test that discloses the presence of *an amount of alcohol or* a controlled substance *prohibited by R.C. 4506.15(A)(1) to (5) (see paragraphs (1) to (5) in* "**Existing law**" *under* "**Prohibited acts**," *above),*[2] or a metabolite of a controlled substance, the person immediately must surrender the person's commercial driver's license to the peace officer. The peace officer must forward the license, together with a sworn report, to the Registrar certifying that the test was requested and that the person either refused to submit to testing or submitted to a test that disclosed the presence of *one of the prohibited concentrations of a substance listed in R.C. 4506.15(A)(1) to (5) (see paragraphs (1) to (5) in* "**Existing law**" *under* "**Prohibited acts**," *above), or a metabolite of a controlled substance*. (R.C. 4506.17(D).) (Changes made by the bill are italicized.)

Upon receipt of a sworn report from a peace officer as described in the preceding paragraph, *or upon receipt of notification that a person has been disqualified under a similar law of another state or foreign jurisdiction* (added by the bill), the Registrar must disqualify the person named in the report from driving a commercial motor vehicle for the period described in (1) or (2) in the last paragraph in "**Existing law**," above (R.C. 4506.17(E)).

Notice of conviction of nonresident for traffic violation committed in commercial motor vehicle

Under existing law, within ten days after receiving a report of conviction of any nonresident holder of a commercial driver's license for a violation of a state law or local ordinance or resolution relating to traffic control, other than parking violations, committed in a commercial motor vehicle, the Registrar must notify the driver licensing authority in the state that issued the nonresident's commercial driver's license of the conviction.

The bill provides that within ten days after receiving a report of the conviction of any nonresident for a violation of a state law or local ordinance or resolution relating to traffic control, other than parking violations, committed in a commercial motor vehicle, the Registrar must notify the driver licensing authority in the *jurisdiction in which the*

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[2] A cross reference is made to the appropriate section and divisions instead of spelling out the actual alcohol concentrations, which are the same as in the referenced section and divisions.

person resides and the driver licensing authority that issued the nonresident's commercial driver's license, *if different from the state of "residence"* (italicized language is added by the bill). (R.C. 4506.21.)

Abstracts of traffic violations

Existing law

Under existing law, if a person is convicted of or forfeits bail in relation to a violation of any provision of R.C. 4511.01 to 4511.771 (traffic law violations relating to the operation of motor vehicles) or R.C. 4513.01 to 4513.36 (traffic law violations relating to equipment and loads) or a violation of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets, the county court judge, mayor of a mayor's court, or clerk, within *ten days* after the conviction or bail forfeiture, must prepare and immediately forward to the BMV an abstract, certified by the preparer to be true and correct, of the court record covering the case in which the person was convicted or forfeited bail (R.C. 4510.03(B)).

Within *ten days* after the conviction or forfeiture of bail of a person upon a charge of violating any provision of R.C. 4511.01 to 4511.78 and 4511.99 (traffic law violations relating to the operation of motor vehicles) or R.C. 4513.01 to 4513.37 (traffic law violations relating to equipment and loads) or other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways, a county court judge, mayor, or clerk of a court of record must prepare and immediately forward to the DPS an abstract of the court record covering the case in which the person was convicted or forfeited bail, which abstract must be certified by the person required to prepare the same to be true and correct (R.C. 4513.37).

Operation of the bill

The bill changes the time period within which the above described abstracts must be prepared and immediately forwarded to the BMV or the DPS, whichever is applicable, from ten to seven days after the conviction or bail forfeiture (R.C. 4510.03(B) and 4513.37).

BMV records

Under current law, the BMV must record within ten days, after receipt, and keep at its main office, all abstracts of convictions for which points are chargeable or abstracts received under R.C. 4510.03 (court records and abstracts of traffic violations), 4510.031 (abstracts of traffic offenses on federal property), 4510.032 (abstracts if charges are reduced or dismissed or bail is forfeited), or 4510.034 (abstracts containing information regarding ineligibility for registration) and must maintain records of convictions and

bond forfeitures for any violation of a state law or a municipal ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways and streets, except a violation related to parking a motor vehicle. The bill provides that the BMV must record the abstracts described above within ten days of conviction or bail forfeiture (instead of within ten days after receipt of the abstracts). (R.C. 4510.036(A).)

Dimensions of vehicles operated on highways

Continuing and existing law

Continuing law prescribes the maximum allowable dimensions of vehicles operated upon the public highways, streets, bridges, and culverts. It prohibits such vehicles from having a length in excess of the following (R.C. 5577.05(C)(2) to (8)):

(1) Generally, 45 feet for all passenger bus type vehicles;

(2) 53 feet for any semitrailer when operated in a commercial tractor-semitrailer combination, with or without load, except that the Director may prohibit the operation of any such commercial tractor-semitrailer combination on the state highways or portions of them as the Director designates;

(3) 28½ feet for any semitrailer or trailer when operated in a commercial tractor-semitrailer-trailer or commercial tractor-semitrailer-semitrailer combination, except that the Director may prohibit the operation of any such commercial tractor-semitrailer-trailer or commercial tractor-semitrailer-semitrailer combination on the state highways or portions of them as the Director designates;

(4)(a) 97 feet for drive-away saddlemount vehicle transporter combinations and drive-away saddlemount with fullmount vehicle transporter combinations when operated on any interstate, United States route, or state route, including reasonable access travel on all other roadways for a distance not to exceed one road mile from any interstate, United States route, or state route, not to exceed three saddlemounted vehicles, but which may include one fullmount;

(b) 75 feet for drive-away saddlemount vehicle transporter combinations and drive-away saddlemount with fullmount vehicle transporter combinations, when operated on any roadway not designated as an interstate, United States route, or state route, not to exceed three saddlemounted vehicles, but which may include one fullmount;

(5) 65 feet for any other combination of vehicles coupled together, with or without load, except as described in (2) and (3), above, and in R.C. 5577.05(E);

(6) 45 feet for recreational vehicles;

(7) 40 feet for all other vehicles except trailers and semitrailers, with or without load.

Under existing law, these maximum allowable lengths do not include safety devices, bumpers attached to the front or rear of such bus or combination, B-train assembly used between the first and second semitrailer of a commercial tractor-semitrailer-semitrailer combination, energy conservation devices as provided in any regulations adopted by the Secretary of the United States Department of Transportation, or any noncargo-carrying refrigeration equipment attached to the front of trailers and semitrailers (R.C. 5577.05(F)).

Operation of the bill

The bill provides that the above-described maximum allowable lengths of vehicles additionally do not include nonproperty carrying devices or components that do not extend more that 24 inches beyond the rear of the vehicle and are needed for loading or unloading (R.C. 5577.05(F)).

Pre-trial diversion programs

Existing law

Existing law authorizes the prosecuting attorney to establish pre-trial diversion programs for adults who are accused of committing criminal offenses and whom the prosecuting attorney believes probably will not offend again. The programs are not applicable to any of the following (R.C. 2935.36(A)):

(1) Repeat offenders or dangerous offenders;

(2) Persons accused of an offense of violence or other specified criminal offenses, with the exception that the prosecuting attorney may permit persons accused of any such offense to enter a pre-trial diversion program if the prosecuting attorney finds any of specified circumstances;

(3) Persons accused of a violation of R.C. Chapter 2925. (drug offenses) or 3719. (controlled substances);

(4) Persons accused of a violation of R.C. 4511.19 (OVI) or a violation of any substantially similar municipal ordinance.

Operation of the bill

The bill adds the provision that pre-trial diversion programs are not applicable to persons who are accused of an offense while operating a commercial motor vehicle or persons who hold a commercial driver's license and are accused of any offense, if conviction of the offense would disqualify the person from operating a commercial motor vehicle under R.C. Chapter 4506. (CDL Law) or would subject the person to any other sanction under that chapter (R.C. 2935.36(A)(5)).

Intervention in lieu of conviction

Existing law

Under existing law, if an offender is charged with a criminal offense and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offender's criminal behavior, the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction. The request must include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred. The court may reject an offender's request without a hearing. If the court elects to consider an offender's request, the court must conduct a hearing to determine whether the offender is eligible for intervention in lieu of conviction and must stay all criminal proceedings pending the outcome of the hearing. If the court schedules a hearing, the court must order an assessment of the offender for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan. (R.C. 2951.041(A).)

An offender is eligible for intervention in lieu of conviction if the court finds that all of the conditions specified in the law exist (R.C. 2951.041(B)).

Operation of the bill

The bill adds another condition for an offender to be eligible for intervention in lieu of conviction. The court must find that the offender is not charged with an offense that would result in the offender being disqualified under R.C. Chapter 4506. (CDL Law) from operating a commercial motor vehicle or would subject the offender to any other sanction under that chapter (R.C. 2951.041(B)(10)).

COMMENT

1. R.C. 4506.01 defines the following terms, among others, as used in the CDL Law:

"Alcohol concentration" means the concentration of alcohol in a person's blood, breath, or urine. When expressed as a percentage, it means grams of alcohol per the following: (a) 100 milliliters of whole blood, blood serum, or blood plasma, (b) 210 liters of breath, or (c) 100 milliliters of urine.

"Commercial driver's license" means a license issued in accordance with the CDL Law that authorizes an individual to drive a commercial motor vehicle.

Except when used in R.C. 4506.25, "commercial motor vehicle" means any motor vehicle designed or used to transport persons or property that meets any of the following qualifications:

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

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

(c) Any single vehicle or combination of vehicles that is not a class A or class B vehicle, but is designed to transport 16 or more passengers including the driver;

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

(e) Is transporting hazardous materials for which placarding is required under subpart F of 49 C.F.R. part 172, as amended;

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

"Commercial driver license information system" means the information system established pursuant to the requirements of the "Commercial Motor Vehicle Safety Act of 1986," 100 Stat. 3207-171, 49 U.S.C.A. App. 2701.

"Controlled substance" means all of the following:

(a) Any substance classified as a controlled substance under the "Controlled Substances Act," 80 Stat. 1242 (1970), 21 U.S.C.A. 802(6), as amended;

(b) Any substance included in schedules I through V of 21 C.F.R. part 1308, as amended;

(c) Any "drug of abuse" (defined as any controlled substance, dangerous drug as defined in R.C. 4729.01, or over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes).

"Conviction" means an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

"Disqualification" means any of the following:

(a) The suspension, revocation, or cancellation of a person's privileges to operate a commercial motor vehicle;

(b) Any withdrawal of a person's privileges to operate a commercial motor vehicle as the result of a violation of state or local law relating to motor vehicle traffic control other than parking, vehicle weight, or vehicle defect violations;

(c) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. 391.

"Drive" means to drive, operate, or be in physical control of a motor vehicle.

"Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle or is required to have a commercial driver's license.

"Endorsement" means an authorization on a person's commercial driver's license that is required to permit the person to operate a specified type of commercial motor vehicle.

"Fatality" means the death of a person as the result of a motor vehicle accident occurring not more than 365 days prior to the date of death.

"Felony" means any offense under federal or state law that is punishable by death or specifically classified as a felony under the law of Ohio, regardless of the penalty that may be imposed.

"Foreign jurisdiction" means any jurisdiction other than a "state" (defined as a state of the United States and includes the District of Columbia).

"Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73, as amended.

"Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, local, Canadian, or Mexican jurisdiction declaring that a driver, commercial motor vehicle, or commercial motor carrier operation is out of service as defined in 49 C.F.R. 390.5.

"Residence" means any person's residence determined in accordance with standards prescribed in rules adopted by the Registrar.

"Serious traffic violation" means a conviction arising from a single charge of operating a commercial motor vehicle in violation of any provision of R.C. 4506.03 (commercial driver's license or temporary instruction permit requirements) or a conviction arising from the operation of any motor vehicle that involves any of the following:

(a) A single charge of any speed in excess of the posted speed limit by 15 miles per hour or more;

(b) Violation of R.C. 4511.20 (operation in willful or wanton disregard of the safety of persons or property) or 4511.201 (operation off street or highway in willful or wanton disregard of the safety of persons or property) or any similar ordinance or resolution, or of any similar law of another state or political subdivision of another state;

(c) Violation of a law of Ohio or an ordinance or resolution relating to traffic control, other than a parking violation, or of any similar law of another state or political subdivision of another state, that results in a fatal accident;

(d) Violation of R.C. 4506.03 or a substantially similar municipal ordinance or county or township resolution, or of any similar law of another state or political subdivision of another state, that involves the operation of a commercial motor vehicle without a valid commercial driver's license with the proper class or endorsement for the specific vehicle group being operated or for the passengers or type of cargo being transported;

(e) Violation of R.C. 4506.03 or a substantially similar municipal ordinance or county or township resolution, or of any similar law of another state or political subdivision of another state, that involves the operation of a commercial motor vehicle without a valid commercial driver's license being in the person's possession;

(f) Violation of R.C. 4511.33 (driving in marked lanes) or 4511.34 (space between moving vehicles), or any municipal ordinance or county or township resolution substantially similar to either of those sections, or any substantially similar law of another state or political subdivision of another state;

(g) Violation of any other law of Ohio or an ordinance or resolution relating to traffic control, other than a parking violation, that is determined to be a serious traffic violation by the United States Secretary of Transportation and the Director designates as such by rule.

"Tester" means a person or entity acting pursuant to a valid agreement entered into pursuant to R.C. 4506.09(B).

2. R.C. 4511.181(C) (not in the bill) defines "municipal OVI ordinance" and "municipal OVI offense" 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, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

HISTORY

ACTION	DATE
Introduced	07-08-09
Reported, H. Civil and Commercial Law	04-29-10

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