



# Ohio Legislative Service Commission

## Bill Analysis

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129th General Assembly

(As Reported by S. Judiciary – Civil Justice)

**Reps.** Huffman, Okey, Murray, Letson, McKenney, Coley, Bupp, Carney, Combs, DeGeeter, Derickson, Foley, Garland, Luckie, Mallory, McClain, Milkovich, O'Brien, Patmon, Pillich, Slaby, Stebelton, Stinziano, Williams, Batchelder

**Sens.** Seitz, Obhof, Kearney, Wagoner

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## BILL SUMMARY

- Consolidates references to costs and fees, other than attorney fees, that apply in courts of record, generally organizes costs and fees according to the courts in which they apply, and cross-references the Revised Code sections that create the costs and fees.
- Requires the Ohio Judicial Conference to adjust each dollar amount set forth in the provision of law that specifies the amount of various types of property that is exempt from execution, garnishment, attachment, or sale to reflect the change in the consumer price index or other generally available comparable index.
- Requires the Ohio Judicial Conference to prepare a memorandum specifying those adjusted dollar amounts and to transmit that memorandum to the Director of the Legislative Service Commission who must publish that memorandum in the *Register of Ohio*.
- Allows the Ohio Judicial Conference to publish that memorandum in any other manner it concludes will be reasonably likely to inform persons who are affected by its adjustment of the dollar amounts.
- Allows an investigator appointed by the State Auditor to carry a concealed weapon while engaging in the scope of the investigator's duties.
- Allows persons who are due restitution in felony and misdemeanor criminal cases to request a certificate of judgment from the clerk of the court that is in the same manner and form as a certificate of judgment issued in a civil action.

- Provides that a court retains jurisdiction over a jail term imposed on a misdemeanor offender and the offender and allows that court to substitute one or more community control sanctions under the Misdemeanor Sentencing Law for any jail days that are not mandatory jail days.
- Provides that court retains jurisdiction over any community control sanctions imposed on a misdemeanor offender, the offender, and the duration of the sanctions and allows that court to modify the sanctions or conditions of release previously imposed, substitute a community control sanction or condition of release for another community control sanction or condition of release previously imposed, or impose an additional community control sanction or condition of release.
- Allows a misdemeanor offender, if a court imposes a term of community service upon the offender, to request that the court modify the sentence to authorize the offender to make a reasonable contribution to the general fund of the county, municipality, or other local entity that provides funding to the court and requires the offender to make that contribution if the court grants that request.
- Prohibits a person from introducing evidence of an award of restitution in a civil action for the purposes of imposing liability against an insurer under the Uninsured and Underinsured Motorist Coverage Law.
- Provides that when an the offender is ordered under various Motor Vehicle laws to serve a term of community service, the failure of the offender to complete a term of community service may be punished as indirect contempt of court.
- Allows, rather than requires as under existing law, the trial judge to impound the identification license plates of any motor vehicle registered in the name of a person that is convicted driving under suspension or in violation of a license restriction under R.C. 4510.11, driving under OVI suspension, failure to reinstate a license, driving under financial responsibility law suspension or cancellation, or driving under a nonpayment of judgment suspension.
- Specifies certain motor vehicle offenses as unclassified misdemeanors and provides that the offender cannot be sentenced to a jail term or a community residential sanction for the offense but allow the offender to be fined up to \$1,000 and to be ordered to serve a term of community service of up to 500 hours.
- Modifies the points assessed for specified motor vehicle law violations.
- Allows, instead of requires as under existing law, the court to impose a class seven suspension for certain motor vehicle law violations.

- Provides that the immobilization of a motor vehicle, the impoundment of that vehicle's license plates, and the forfeiture to the state of that motor vehicle are discretionary, rather than mandatory under existing law for the offense of driving under license suspension or in violation of a license restriction under R.C. 4510.11.
- Allows, upon the motion of the prosecuting authority in specified traffic offense cases, a noncertified copy of the LEADS report to be introduced to create a rebuttable presumption that the accused was under suspension or had no license at the time of the offense if the offender is charged with driving under license suspension or in violation of a license restriction under R.C. 4510.11, the bill's driving under suspension offense, operating a motor vehicle without a license, driving under financial responsibility law suspension or cancellation, failure to reinstate a license.
- Requires an offender charged with driving under a licensed suspension or in violation of a license restriction under R.C. 4510.11, the bill's driving under suspension offense, driving under OVI suspension, driving under financial responsibility law suspension or cancellation, OVI, to provide the court with proof of financial responsibility and if the offender fails to provide that proof, the court may order restitution in an amount not exceeding \$5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle.

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## CONTENT AND OPERATION

### Property exempted from execution, garnishment, attachment, or sale – adjustment of dollar amount

Existing law allows a person who is domiciled in Ohio to hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, including (1) the person's interest, not to exceed \$3,225, in one motor vehicle, (2) the person's interest, not to exceed an aggregate of \$2,025, in all implements, professional books, or tools of the person's profession, trade, or business, including agriculture,

(3) the person's interest in contracts of life or endowment insurance or annuities, as exempted by Ohio law, and (4) the person's interest in a policy of group insurance or the proceeds of a policy of group insurance, as exempted by Ohio law.<sup>1</sup>

On April 1, 2010, and on the first day of April in each third calendar year after 2010, each dollar amount set forth in this provision must be adjusted, when determining the amount that is exempt from execution, garnishment, attachment, or sale, to reflect the change in the consumer price index for all urban consumers, as published by the United States Department of Labor, or, if that index is no longer published, a generally available comparable index, for the three-year period ending on December 31 of the preceding year. The bill modifies this provision by requiring the Ohio Judicial Conference to adjust each dollar amount to reflect the change in the consumer price index or other generally available comparable index, if applicable.<sup>2</sup>

The bill also requires the Ohio Judicial Conference to prepare a memorandum specifying the adjusted dollar amounts and transmit that memorandum to the Director of the Legislative Service Commission, who must publish the memorandum in the *Register of Ohio*. The publication of the memorandum in the *Register of Ohio* must continue until the next memorandum specifying an adjustment is published. The Ohio Judicial Conference also may publish the memorandum in any other manner it concludes will be reasonably likely to inform persons who are affected by its adjustment of the dollar amounts.<sup>3</sup>

The bill also requires that the Ohio Judicial Conference make and cause publication of the adjustment as soon as possible but not later than 30 days after the effective date of the bill.<sup>4</sup>

### **Consolidation of references to fees and costs in courts of record**

Existing law provides for the imposition of numerous charges upon parties in civil and criminal lawsuits. In some instances, the charges are for services rendered by private individuals, such as court interpreters, or public officials, such as sheriffs (for service of process, for example) or court clerks (often for furnishing transcripts of judgments or other documents). In other cases, the charges are required in order to pursue a civil action (e.g., filing fees) or are imposed as part of a criminal sentence (e.g., fines or costs of prosecution). The Revised Code characterizes some of these charges as

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<sup>1</sup> R.C. 2329.66(A).

<sup>2</sup> R.C. 2329.66(B).

<sup>3</sup> R.C. 2329.66(B).

<sup>4</sup> Section 3.

costs that are taxed as part of the judgment, while it refers to others as fees. Occasionally, the Revised Code lists "fees" that are to be taxed as "costs." Some charges apply in only one court, others in more than one court or in all courts. A few Revised Code sections provide lists of fees that apply to particular officials or in particular courts. For example, R.C. 311.17 has a long list of fees to be charged by the sheriff, and R.C. 2101.16 lists dozens of fees charged by the probate court. However, other charges are scattered throughout the Revised Code and can be hard to locate.

The bill consolidates in eight new Revised Code sections references to the numerous costs and fees, other than fees of receivers (see "**Fees of receivers**," below) and attorney fees, that apply in Ohio's courts of record. The bill does not amend the sections that establish these costs and fees or abolish or create any costs or fees. Rather, the bill organizes existing costs and fees according to the courts in which they apply, and it refers to the Revised Code sections that create them. In essence, the bill provides a reference guide to fees and costs in Ohio's courts.

### **Organization of fees and costs by court**

Every Revised Code section in the bill except R.C. 2746.09 (see "**Fees of receivers**," below) starts with a statement that specifies the court or courts in which the listed costs and fees apply. For example, R.C. 2746.05 begins, "In addition to any applicable fees or costs set forth in sections 2746.01, 2746.02, and 2746.04 of the Revised Code or any other applicable provision of law, a *juvenile court* shall tax as costs or otherwise require the payment of fees for the following services or as compensation for the following persons." This statement is followed by the costs and fees specific to that court or those courts, identified by the Revised Code section where those charges are found. Here, as an illustration, is the list in R.C. 2746.05 for juvenile courts:

(A) The fees provided for in section 2151.54 of the Revised Code;

(B) Additional fees to computerize the court, make available computerized legal research services, and computerize the office of the clerk of the court, as provided in sections 2151.541, 2153.081, and 2301.031 of the Revised Code;

(C) The costs of house arrest with electronic monitoring, as provided in section 2152.19 of the Revised Code;

(D) Witness fees, as provided in section 2151.28 of the Revised Code.

The bill organizes costs and fees according to the courts in which they apply, as follows:

R.C. 2746.01: All courts of record (primarily in civil cases).

R.C. 2746.02: All courts of record (in criminal and juvenile cases and some civil actions related to criminal cases).

R.C. 2746.03: Supreme Court, courts of appeals, Court of Claims (in addition to the charges applicable in all courts of record).

R.C. 2746.04: Courts of common pleas (in certain civil cases, in addition to the charges applicable in all courts of record).

R.C. 2746.05: Juvenile courts (in addition to the charges applicable in all courts of record and the courts of common pleas).

R.C. 2746.06: Probate courts (in addition to the charges applicable in all courts of record and the courts of common pleas, subject to any waiver of fees for combat zone casualties under R.C. 2101.164 and any reduction of fees that R.C. 2101.20 allows the judge to make).

R.C. 2746.07: Municipal courts (in addition to the charges applicable in all courts of record and the courts of common pleas).

R.C. 2746.08: County courts (in addition to the charges applicable in all courts of record and the courts of common pleas).

The Revised Code sections dealing with municipal and county courts include references to costs and fees named in R.C. 2746.04 (charges applicable in courts of common pleas) because (1) various sections of the Municipal Court Law and County Court Law provide for the imposition of fees or costs in accordance with the statutes that govern courts of common pleas, and (2) R.C. Ch. 2335., although placed in the title that governs courts of common pleas, does not expressly limit to those courts the fees and costs it establishes. Many of these charges apply to trial courts generally.

## **Fees of receivers**

The bill consolidates Revised Code references to the costs, expenses, or fees of receivers in a separate section. These references include costs or expenses expressly allowed to receivers by statute, fees to which a receiver appointed under R.C. 2715.20 (attachment) or 2735.01 (mortgage foreclosure and other specified types of cases) may be entitled, and fees allowed to a receiver under any applicable rule of court. The bill does not amend any of the sections that provide for the appointment, costs, or expenses of receivers.<sup>5</sup>

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<sup>5</sup> R.C. 2746.09.

## **Investigators appointed by State Auditor – ability to carry a concealed weapon**

Under existing law, an investigator appointed by the State Auditor, for the purpose of discharging the duties of the State Auditor and while engaged in the scope of the investigator's duties in enforcing Ohio law on behalf of the State Auditor, has all of the powers and authority of a peace officer under the laws of Ohio, except for the power and authority to carry a concealed weapon. The bill removes this limitation, and, as a result, an investigator appointed by the State Auditor may carry a concealed weapon while engaging in the scope of the investigator's duties.<sup>6</sup>

## **Felony financial sanctions – restitution**

Existing law provides that generally, in addition to imposing court costs, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under Ohio law or, in certain circumstances, may impose upon the offender a fine.<sup>7</sup> The financial sanctions include restitution by the offender to the victim of the offender's crime or any survivor of the victim in an amount based on the victim's economic loss.<sup>8</sup> The sentencing court must sentence an offender to a financial sanction of restitution by an offender to the victim or any survivor of the victim if the offender is convicted of or pleads guilty to certain specified offenses and also is convicted of or pleads guilty to a specification that charges that the offender knowingly committed the offense in furtherance of human trafficking.<sup>9</sup> Existing law also generally provides that a financial sanction is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed as described above is an order in favor of the victim of the offender's criminal act that can be collected through execution or through an order, and the offender is considered for purposes of the collection as the judgment debtor. The bill provides that once the financial sanction is imposed as a judgment or order, the victim, private provider, state, or political subdivision may obtain from the clerk of the court in which the judgment was entered a certificate of judgment that is in the same manner and form as a certificate of judgment issued in a civil action.<sup>10</sup>

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<sup>6</sup> R.C. 117.091.

<sup>7</sup> R.C. 2929.18(A).

<sup>8</sup> R.C. 2929.18(A)(1).

<sup>9</sup> R.C. 2919.18(B)(8).

<sup>10</sup> R.C. 2919.18(D).

## **Definite jail terms – misdemeanors**

Under the existing Misdemeanor Sentencing Law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender, the court is required to impose a specified definite jail term. The length of the jail term depends upon the severity of the misdemeanor offense.<sup>11</sup> There are also certain circumstances in which an offender must be sentenced to a mandatory jail term if the offender is convicted of or pleads guilty to certain specified misdemeanors and is also convicted of or pleads guilty to any one of several specified specifications.<sup>12</sup> Under the bill, if a court sentences an offender to a jail term for a misdemeanor violation, the sentencing court retains jurisdiction over the offender and the jail term. Upon motion of either party or upon the court's own motion, the court, in the court's sole discretion or as the circumstances warrant, may substitute one or more community control sanctions for any jail days that are not mandatory jail days.<sup>13</sup>

## **Community control sanctions – misdemeanors**

Under existing law, generally speaking the sentencing court may sentence an offender for a misdemeanor to one or more community control sanctions.<sup>14</sup> The bill provides that if a court sentences an offender to any community control sanction or combination of community control sanctions, the sentencing court retains jurisdiction over the offender and the period of the community control for the duration of the period of community control. Upon the motion of either party or on the court's own motion, the court, in the court's sole discretion or as the circumstances warrant, may modify the community control sanctions or conditions of release previously imposed, substitute a community control sanction or condition of release for another community control sanction or condition of release previously imposed, or impose an additional community control sanction or condition of release.<sup>15</sup>

## **Nonresidential sanctions – misdemeanors**

Under existing law, except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any nonresidential sanction or combination of nonresidential

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<sup>11</sup> R.C. 2929.24(A).

<sup>12</sup> R.C. 2929.24(E), (F), and (G).

<sup>13</sup> R.C. 2929.24(H).

<sup>14</sup> R.C. 2929.25(A)(1)(a).

<sup>15</sup> R.C. 2929.25(B).

sanctions authorized by law.<sup>16</sup> These sanctions include a term of community service of up to 500 hours for a misdemeanor of the first degree or 200 hours for a misdemeanor of the second, third, or fourth degree.<sup>17</sup> Under the bill, if the court imposes a term of community service, the offender may request that the court modify the sentence to authorize the offender to make a reasonable contribution, as determined by the court, to the general fund of the county, municipality, or other local entity that provides funding to the court. The court may grant the request if the offender demonstrates a change in circumstances from the date the court imposes the sentence or that the modification would otherwise be in the interests of justice. The bill provides that if the court grants the request, the offender must make a reasonable contribution to the court, and the clerk of the court must deposit that contribution into the general fund of the county, municipality, or other local entity that provides funding to the court. If more than one entity provides funding to the court, the clerk must deposit a percentage of the reasonable contribution equal to the percentage of funding the entity provides to the court in that entity's general fund.<sup>18</sup>

Existing law allows a court to impose a term of community service for a minor misdemeanor in lieu of all or part of a fine. That term of community service cannot exceed 30 hours. The bill allows the court to modify the sentence to authorize a reasonable contribution, as determined by the court, to the appropriate general fund as described in the previous paragraph.<sup>19</sup>

### **Misdemeanor financial sanctions – restitution**

Under existing law, in addition to imposing court costs, the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions, including, unless the offense is a minor misdemeanor or could be disposed of by the Traffic Violations Bureau serving the court, restitution by the offender to the victim or any survivor of the victim, in an amount based on the victim's economic loss. All restitution payments are credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. The bill prohibits a person from introducing evidence of an award of restitution in a civil action

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<sup>16</sup> R.C. 2929.27(A).

<sup>17</sup> R.C. 2929.27(A)(3).

<sup>18</sup> R.C. 2929.27(B).

<sup>19</sup> R.C. 2929.27(D).

for purposes of imposing liability against an insurer under the Uninsured and Underinsured Motorist Coverage Law.<sup>20</sup>

The bill also provides that once the financial sanction is imposed as a judgment or order, the victim, private provider, state, or political subdivision may obtain from the clerk of the court in which the judgment was entered a certificate of judgment that is in the same manner and form as a certificate of judgment issued in a civil action and that restitution can be collected through that certificate of judgment.<sup>21</sup>

### **Community service as condition of community control sanction**

Existing law allows the court to require an offender who is convicted of or pleads guilty to a misdemeanor, as a condition of the offender's sentence of a community control sanction, to perform supervised community service work. If an offender is convicted of or pleads guilty to a felony, the court may impose a sanction that requires the offender to perform supervised community service work. Under the bill, after imposing a term of community service, the court may modify the sentence to authorize a reasonable contribution to the appropriate general fund.<sup>22</sup>

### **Permitting operation of motor vehicle knowing operator does not have valid driver's license – failure to complete community service**

Existing law prohibits a person from permitting the operation of a motor vehicle upon any public or private property used by the public for purposes of vehicular travel or parking knowing the operator does not have a valid driver's license issued to the operator by the Registrar of Motor Vehicles or a valid commercial driver's license. Generally, whoever violates this prohibition is guilty of an unclassified misdemeanor, and the offender must be sentenced under the Misdemeanor Sentencing Law but cannot be sentenced to a jail term or community residential sanction. However, the offender can be fined up to \$1,000 and may be ordered to serve a term of community service of up to 500 hours. The bill provides that the failure of an offender to complete a term of community service imposed by the court may be punished as indirect contempt of court under R.C. 2705.02(A) (disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer) that may be filed in the underlying case.<sup>23</sup>

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<sup>20</sup> R.C. 2929.28(A)(1).

<sup>21</sup> R.C. 2929.28(D)(1).

<sup>22</sup> R.C. 2951.02(B).

<sup>23</sup> R.C. 4507.02(A)(1).

## **Impounding identification license plates**

The bill authorizes, rather than requires as under existing law, the trial judge of any court to impound the identification license plates of any motor vehicle registered in the name of a person if that person is convicted of a violation of the prohibition against driving under suspension or in violation of a license restriction under R.C. 4510.11, driving under OVI suspension, failure to reinstate a license, driving under financial responsibility law suspension or cancellation or driving under a nonpayment of judgment suspension.<sup>24</sup>

## **Duty to display license or furnish satisfactory proof of license upon demand**

Existing law provides that the operator of a motor vehicle must display the operator driver's license, or furnish satisfactory proof that the operator has a driver's license, upon demand by any peace officer or of any person damaged or injured in any collision in which the licensee may be involved. When a demand is properly made and the operator has the operator's driver's license on or about the operator's person, the operator cannot refuse to display the license. Whoever violates this prohibition is guilty of a misdemeanor of the first degree.<sup>25</sup>

Under the bill, whoever violates the above-described prohibition is guilty of an unclassified misdemeanor, and the offender must be sentenced pursuant to the Misdemeanor Sentencing Law, except that the offender cannot be sentenced to a jail term and cannot be sentenced to a community residential sanction. However, the offender may be fined up to \$1,000 and may be ordered to serve a term of community service of up to 500 hours. The failure of the offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt that may be filed in the underlying case.<sup>26</sup> If, within three years of the offense, the offender previously has been convicted of or pleaded guilty to two or more violations of the above-described prohibition or a substantially similar municipal ordinance, the offense is a misdemeanor of the first degree.<sup>27</sup>

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<sup>24</sup> R.C. 4507.02(B)(1).

<sup>25</sup> R.C. 4507.35(A) and (B).

<sup>26</sup> R.C. 4507.35(B)(1).

<sup>27</sup> R.C. 4507.35(B)(2).

## Points assessed for motor vehicle law violations

Under existing law, a court must assess a specified number of points against an offender's driver's license for each of several specified traffic offenses. The bill modifies the number of points to be assessed for those offenses. The following table sets forth the changes made by the bill.

Existing law	Sub. H.B. 5	Points assessed under existing law	Points assessed under Sub. H.B. 5
Driving under suspension under R.C. 4510.11, driving in violation of a license restriction under R.C. 4510.11, driving under financial responsibility law suspension or cancellation, failure to reinstate a license, or any ordinance prohibiting the operation of a motor vehicle while the driver's or commercial driver's license is under suspension (R.C. 4510.036(C)(5)).	Driving under suspension under R.C. 4510.11, driving in violation of a license restriction under R.C. 4510.11, driving under suspension under R.C. 4510.111, driving under financial responsibility law suspension or cancellation, failure to reinstate a license, or any ordinance prohibiting the operation of a motor vehicle while the driver's or commercial driver's license is under suspension (R.C. 4510.036(C)(14)).	6 points	2 points
Driving under OVI suspension (R.C. 4510.036(C)(5)).	Driving under OVI suspension or a violation of any ordinance prohibiting the operation of a motor vehicle upon the public roads or highways within Ohio while the driver's or commercial driver's license of the person is under suspension and the suspension was imposed under the OVI law, the law regarding implied consent, or the law regarding a person's initial appearance or the law regarding the suspension of a driver's license for a violation of a municipal ordinance due to a conviction for a violation of a municipal OVI ordinance or any ordinance prohibiting the operation of a motor vehicle while the driver's or	6 points	6 points

Existing law	Sub. H.B. 5	Points assessed under existing law	Points assessed under Sub. H.B. 5
	commercial driver's license is under suspension for an OVI offense (R.C. 4510.036(C)(6)).		
N/A	Driving under a 12-point suspension imposed under R.C. 4510.037(J) or a municipal ordinance (R.C. 4510.036(C)(5)).	N/A	6 points

The bill also specifies that, with the exception of violations of the prohibition against operating a motor vehicle without a valid license, where no points are assessed, the court must assess two points for all other reported moving violations.<sup>28</sup>

### Driving under a 12-point suspension

Under existing law, any person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended as a repeat traffic offender and who, during the suspension, operates any motor vehicle upon any public roads and highways is guilty of a misdemeanor of the first degree. The bill specifies that the person is guilty of driving under a 12-point suspension.<sup>29</sup>

### Existing driving under suspension or in violation of a license restriction prohibitions

#### Prohibitions

The bill continues to prohibit a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under any provision of the Revised Code, other than Ohio law regarding financial responsibility, or under any applicable law in any other jurisdiction in which the person's license or permit was issued from operating any motor vehicle upon the public roads and highways or upon any public or private property used by the public for the 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

<sup>28</sup> R.C. 4510.036(C)(15).

<sup>29</sup> R.C. 4510.037(J).

with the terms of the limited driving privileges.<sup>30</sup> Under existing law the name of this offense is "driving under suspension," a first degree misdemeanor. The bill removes the name of the offense, keeps it a first degree misdemeanor, and allows (rather than requires as under existing law) the court to impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating license (definite period not to exceed one year).<sup>31</sup>

The bill also continues to prohibit a person 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 Ohio in violation of any restriction of the person's driver's or commercial driver's license or permit imposed under R.C. 4510.06(D) (restrictions suitable for commercial driver licensee's driving ability) or R.C. 4507.14 (restrictions suitable for licensee's driving ability). Under existing law, the name of this offense is "driving in violation of a license restriction," a first degree misdemeanor. The bill removes the name of the offense, keeps it a first degree misdemeanor, and allows the court to impose upon the offender a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating license.<sup>32</sup>

The bill removes an existing law provision that requires an offender who is guilty of driving under suspension to be sentenced under the Misdemeanor Sentencing Law (offender is guilty of an unclassified misdemeanor) if the offender's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under R.C. 3123.58 (person is in default for not paying child support) or 4510.22 (suspension of license for failure to appear or to pay fine). Under existing law, the offender could not be sentenced to a jail term or a community residential sanction, but the offender could be fined up to \$1,000 and could be ordered to serve a term of community service of up to 500 hours. Existing law also provides that if, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of driving under suspension or driving in violation of a license restriction, the offense is a misdemeanor of the first degree.<sup>33</sup>

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<sup>30</sup> R.C. 4510.11(A).

<sup>31</sup> R.C. 4510.11(D)(1).

<sup>32</sup> R.C. 4510.11(B), existing (C)(2), and new (D)(1).

<sup>33</sup> Repealed existing R.C. 4510.11(C)(1)(b).

## Prima-facie evidence

Under the bill, upon the request or motion of the prosecuting authority, a noncertified copy of the Law Enforcement Automated Data System (LEADS) report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with either of the violations described above (driving under suspension or driving in violation of a license restriction under existing law) may be admitted into evidence as prima-facie evidence that the license of the person was under suspension at the time of the alleged violation of the driving under suspension prohibition or the person operated a motor vehicle in violation of a restriction at the time of the alleged violation of the license restriction prohibition. The person charged with a violation of either of these violations may offer evidence to rebut this prima-facie evidence.<sup>34</sup>

## Immobilization, impoundment, and criminal forfeiture

The following table sets forth the immobilization, impoundment, and forfeiture penalties for driving under suspension or in violation of a license restriction under existing law and the bill. The penalties apply only if the vehicle is registered in the name of the offender.

Existing law	Sub. H.B. 5	Existing penalty	Penalty under Sub. H.B. 5
Offender is convicted of driving under suspension or driving in violation of a license restriction (Existing R.C. 4510.11(C)(1) and (2)).	Offender is convicted of one of the same offenses as in the column to the left and, within three years of the offense, previously has been convicted of one violation of either of those offenses, of the bill's new driving under suspension prohibition (new R.C. 4510.111), of driving under financial responsibility law suspension or cancellation, of driving under a nonpayment of judgment suspension (R.C. 4510.16), or of	Mandatory immobilization of the vehicle involved in the offense for 30 days in accordance with the law regarding immobilization orders and impoundment of that vehicle's license plates for 30 days (Existing R.C. 4510.11(C)(3)).	Discretionary immobilization of the vehicle involved in the offense for 30 days and impoundment of that vehicle's license plates for 30 days, in accordance with the law regarding immobilization orders (R.C. 4510.11(D)(2)(a)).

<sup>34</sup> R.C. 4510.11(C).

Existing law	Sub. H.B. 5	Existing penalty	Penalty under Sub. H.B. 5
	a substantially equivalent municipal ordinance (R.C. 4510.11(D)(2)(a)).		
The offender is convicted of the same offenses as in the prior row of this column and previously has been convicted of or pleaded guilty to one of those offenses or of a substantially similar municipal ordinance (R.C. 4510.11(C)(4)).	The offender is convicted of one of the same offenses as in the column to the left and, within three years of that offense, previously has been convicted of two violations of any combination of the offenses described above in this column (R.C. 4510.11(D)(2)(b)).	Mandatory immobilization of the vehicle involved in the offense for 60 days in accordance with the law regarding immobilization orders and impoundment of that vehicle's license plates for 60 days (R.C. 4510.11(C)(4)).	Discretionary immobilization of the vehicle involved in the offense for 60 days and impoundment of that vehicle's license plates for 60 days in accordance with the law regarding immobilization orders (R.C. 4510.11(D)(2)(b)).
The offender is convicted of the same offenses as in the prior rows in this column and previously has been convicted of or pleaded guilty to two or more of those offenses or of a substantially similar municipal ordinance (R.C. 4510.11(C)(5)).	The offender is convicted of one of the same offenses as in the column to the left and, within three years of the offense, previously has been convicted of three or more violations of any combination of the offense described above in this column (R.C. 4510.11(D)(2)(c)).	Mandatory criminal forfeiture of the vehicle involved in the offense to the state (R.C. 4510.11(C)(5)).	Discretionary forfeiture of the vehicle involved in the offense to the state (R.C. 4510.11(D)(2)(c)).

Existing law requires that any order for immobilization and impoundment must be issued and enforced under Ohio law regarding immobilization orders. The bill also requires that these orders be issued and enforced under Ohio law regarding permitting operation by an unlicensed driver.<sup>35</sup>

### **Proof of financial responsibility**

The bill requires an offender convicted of the existing driving under suspension or driving in violation of a license restriction offense to provide the court with proof of financial responsibility. If the offender fails to provide that proof of financial

<sup>35</sup> R.C. 4510.11(E).

responsibility, then, in addition to any other penalties provided by law, the court may order restitution in an amount not exceeding \$5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced.<sup>36</sup>

## **New driving under suspension prohibition**

### **Prohibition**

The bill prohibits a person 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 Ohio if either of the following apply:

(1) The person's driver's or commercial driver's license has been suspended for failing to appear in court or to pay a fine, resulting in license forfeiture;<sup>37</sup>

(2) The person's driver's or commercial driver's license has been suspended for being in default in payment of child support.<sup>38</sup>

### **Prima-facie evidence**

Upon the request or motion of the prosecuting authority, a noncertified copy of the LEADS report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with a violation of the prohibitions described above may be admitted into evidence as prima-facie evidence that the license of the person was under suspension at the time of the alleged violation of either of the prohibitions described above. The person charged with a violation of either of those prohibitions may offer evidence to rebut this prima-facie evidence.<sup>39</sup>

### **Penalties**

Whoever violates either of the prohibitions described above is guilty of "driving under suspension." Generally the offense is an unclassified misdemeanor. The offender must be sentenced pursuant to the Misdemeanor Sentencing law, except that the offender cannot be sentenced to a jail term or to a community residential sanction, but

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<sup>36</sup> R.C. 4510.11(G).

<sup>37</sup> R.C. 4510.111(A).

<sup>38</sup> R.C. 4510.111(B).

<sup>39</sup> R.C. 4510.111(C).

may be fined up to \$1,000 and ordered to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt that may be filed in the underlying case.<sup>40</sup>

### **Proof of financial responsibility**

If, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of driving under suspension under the bill or any combination of two or more violations of driving under suspension, the prohibition against driving under suspension or driving in violation of a license restriction under R.C. 4510.11, driving under financial responsibility law suspension or cancellation, driving under a nonpayment of judgment suspension, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree. The offender must provide the court with proof of financial responsibility. If the offender fails to provide that proof of financial responsibility, then, in addition to any penalties provided by law, the court may order restitution in an amount not exceeding \$5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced under this provision.<sup>41</sup>

### **Class seven suspension**

Under the bill, in all cases involving a violation of the bill's driving under suspension prohibition, the court may impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range of time specified in the law (the bill refers to R.C. 4507.02(A)(7) when it should refer to R.C. 4510.02(A)(7)).<sup>42</sup>

### **Immobilization, impoundment, and criminal forfeiture**

The following table sets forth the immobilization, impoundment, and forfeiture penalties for the offense of driving under suspension that is created by the bill. The penalties apply in all cases in which the vehicle is registered in the name of the offender and the offender previously has been convicted of or pleaded guilty to one or more violations of driving under suspension under the bill, driving under suspension or in violation of a license restriction under R.C. 4510.11, driving under financial responsibility law suspension or cancellation, driving under a nonpayment of judgment

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<sup>40</sup> R.C. 4510.111(D)(1).

<sup>41</sup> R.C. 4510.111(D)(2).

<sup>42</sup> R.C. 4510.111(D)(3).

suspension, or a substantially equivalent municipal offense (referred to collectively in the table as "predicate offenses").

Sub. H.B. 5	Penalty under Sub. H.B. 5
Within three years of the offense, the offender previously has been convicted of or pleaded guilty to one predicate offense (R.C. 4510.111(D)(4)(a)).	Discretionary immobilization of the vehicle involved in the offense for 30 days and impoundment of that vehicle's license plates for 30 days in accordance with Ohio law regarding immobilization orders (R.C. 4510.111(D)(4)(a)).
Within three years of the offense, the offender previously has been convicted of or pleaded guilty to two predicate offenses (R.C. 4510.111(D)(4)(b)).	Discretionary immobilization of the vehicle involved in the offense for 60 days and impoundment of that vehicle's license plates for 60 days in accordance with Ohio law regarding immobilization orders (R.C. 4510.111(D)(4)(b)).
Within three years of the offense, the offender previously has been convicted of or pleaded guilty to three or more predicate offenses (R.C. 4510.111(D)(4)(c)).	Discretionary criminal forfeiture of the vehicle involved in the offense to the state (R.C. 4510.111(D)(4)(c)).

The bill requires that an order for immobilization and impoundment be issued and enforced under Ohio law regarding immobilization orders and Ohio law regarding permitting operation of a motor vehicle without a license, as applicable. The court is prohibited from releasing a motor vehicle from immobilization unless the court is presented with current proof of financial responsibility with respect to that motor vehicle.<sup>43</sup>

An order for criminal forfeiture described above must be issued and enforced under Ohio law regarding the criminal forfeiture of a vehicle. Upon receipt of a copy of the order from the court, neither the Registrar of Motor Vehicles nor a deputy registrar can accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial is five years after the date of the order unless, during that period, the court having jurisdiction of the offense that led to the order terminates the forfeiture and notifies the Registrar of the termination. The Registrar then must take the necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle.<sup>44</sup>

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<sup>43</sup> R.C. 4510.111(E).

<sup>44</sup> R.C. 4510.111(F).

## **Operating a motor vehicle or motorcycle without a license**

### **Prohibition**

Existing 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, commercial driver's license, or license as a motorcycle operator. Whoever violates this prohibition is guilty of operating a motor vehicle without a valid license. The bill adds "or motorcycle" to the name of the offense.<sup>45</sup>

### **Penalty**

If the offender has never held a valid driver's or commercial driver's license or license as a motorcycle operator, the offense is an unclassified misdemeanor. The offender must be sentenced under the Misdemeanor Sentencing Law but cannot be sentenced to a jail term or community residential sanction. However, the offender can be fined up to \$1,000 and may be ordered to serve a term of community service of up to 500 hours. The bill provides that the failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt that may be filed in the underlying case.<sup>46</sup>

Under existing law, if the offender's driver's or commercial driver's license or permit or driver's or commercial driver's license bearing the motorcycle endorsement or the offender's restricted license was expired at the time of the offense, the offense is a minor misdemeanor. If, within three years of the offense, the offender previously was convicted of or pleaded guilty to three or more violations of this provision or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree. The bill provides that the offender only has to have two prior convictions for the offense to be a first degree misdemeanor.<sup>47</sup>

### **Class seven suspension**

The bill modifies existing law by providing that if the offender is sentenced under the law described in the previous paragraph, if within three years of the offense the offender previously was convicted of or pleaded guilty to one or more violations of operating a motor vehicle or motorcycle without a valid license or a substantially equivalent municipal ordinance, and if the offender's license was expired for more than

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<sup>45</sup> R.C. 4510.12(A) and (C).

<sup>46</sup> R.C. 4510.12(C)(1).

<sup>47</sup> R.C. 4510.12(C)(2).

six months at the time of the offense, the court may (instead of shall) impose a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege.<sup>48</sup>

### **Prima-facie evidence**

The bill also provides that, upon the request or motion of the prosecuting authority, a noncertified copy of the LEADS report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with operating a motor vehicle or motorcycle without a valid license may be admitted into evidence as prima-facie evidence that the person did not have either a valid driver's or commercial driver's license at the time of the alleged violation or a valid license as a motorcycle operator either in the form of an endorsement upon a driver's or commercial driver's license or a restricted license at the time of the alleged violation. The person charged with operating a motor vehicle or motorcycle without a valid license may offer evidence to rebut this prima-facie evidence.<sup>49</sup>

### **Driving under OVI suspension**

Existing law prohibits a person whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended under the law regarding operating a motor vehicle under the influence of alcohol or drugs (OVI), implied consent regarding OVI, or the initial appearance regarding OVI, or under the law regarding the suspension of a driver's license for a violation of a municipal OVI ordinance from operating a motor vehicle upon the public roads or highways within Ohio during the period of suspension. Whoever violates this prohibition is guilty of driving under OVI suspension and must be sentenced under the Sentencing Law. The offense is a misdemeanor of the first degree or a misdemeanor depending upon the number of prior convictions of equivalent offenses the offender has. The jail term length, amount of fine, and other penalties also depend upon the offender's record of past convictions.<sup>50</sup>

### **Proof of financial responsibility**

The bill requires that the offender provide the court with proof of financial responsibility. If the offender fails to provide that proof of financial responsibility, then,

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<sup>48</sup> R.C. 4510.12(E).

<sup>49</sup> R.C. 4510.12(B).

<sup>50</sup> R.C. 4510.14(A) and (B).

in addition to any other penalties provided by law, the court may order restitution in an amount not exceeding \$5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense that is a misdemeanor of the first degree for which the offender is sentenced. Proof of financial responsibility means proof of ability to respond in damages for liability arising out of ownership, use, or maintenance of a motor vehicle in the amount of \$12,500 for bodily injury or death to one person in one accident, \$25,000 for bodily injury or death to two or more persons in one accident, or \$7,500 for injury to property in one accident.<sup>51</sup>

## **Driving under financial responsibility law suspension or cancellation and driving under a nonpayment of judgment suspension**

### **Prohibitions**

Existing law prohibits a person, whose driver's or commercial driver's license or temporary instruction permit or nonresident's operating privilege has been suspended or cancelled under the Financial Responsibility Law, from operating any motor vehicle in Ohio, or from knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period of suspension or cancellation. Existing law also prohibits a person from operating a motor vehicle within Ohio, or from 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 for a violation of the prohibition against operating a motor vehicle without proof of financial responsibility, unless proof of financial responsibility is maintained with respect to that vehicle. Whoever violates either prohibition is guilty of driving under financial responsibility law suspension or cancellation.<sup>52</sup>

The bill maintains the above-described prohibitions but also prohibits a person 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 Ohio if the person's driver's or commercial driver's license or temporary instruction permit or nonresident operating privileges have been suspended for nonpayment of judgment. Whoever violates this prohibition is guilty of "driving under a nonpayment of judgment suspension."<sup>53</sup>

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<sup>51</sup> R.C. 4510.14(F) and 4509.01(K).

<sup>52</sup> R.C. 4510.16(A) and (D).

<sup>53</sup> R.C. 4510.16(B) and (D).

## **Penalties**

Under the bill, both of the above-described offenses are generally unclassified misdemeanors, and the offender must be sentenced under the Misdemeanor Sentencing Law but cannot be sentenced to a jail term or community residential sanction. However, the offender can be fined up to \$1,000 and may be ordered to serve a term of community service of up to 500 hours. The bill provides that the failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt that may be filed in the underlying case.<sup>54</sup>

Under existing law, if within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of driving under financial responsibility law suspension or cancellation, or a substantially equivalent municipal ordinance, the offense is a misdemeanor of the first degree. Under the bill, the offender also is guilty of a first degree misdemeanor if the offender previously has been convicted of or pleaded guilty to any combination of two violations of the above offenses or the offense of driving under a nonpayment of judgment suspension, the prohibition against driving under suspension or driving in violation of a license restriction under R.C. 4510.11, or driving under suspension.<sup>55</sup>

## **Prima-facie evidence**

The bill also provides that, upon the request or motion of the prosecuting authority, a noncertified copy of the LEADS report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with driving under financial responsibility law suspension or cancellation or driving under a nonpayment of judgment suspension may be admitted into evidence as prima-facie evidence that the license of the person was under either a financial responsibility law suspension at the time of the alleged violation or a nonpayment of judgment suspension at the time of the alleged violation. The person charged with driving under financial responsibility law suspension or cancellation or driving under a nonpayment of judgment suspension may offer evidence to rebut this prima-facie evidence.<sup>56</sup>

## **Proof of financial responsibility**

The bill requires the offender to provide the court with proof of financial responsibility. If the offender fails to provide that proof of financial responsibility, then,

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<sup>54</sup> R.C. 4510.16(D)(1).

<sup>55</sup> R.C. 4510.16(D)(2).

<sup>56</sup> R.C. 4510.16(B).

in addition to any other penalties provided by law, the court may order restitution in an amount not exceeding \$5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced. Proof of financial responsibility means proof of ability to respond in damages for liability arising out of ownership, use, or maintenance of a motor vehicle in the amount of \$12,500 for bodily injury or death to one person in one accident, \$25,000 for bodily injury or death to two or more persons in one accident, or \$7,500 for injury to property in one accident.<sup>57</sup>

### **Class seven suspension**

The bill allows the court (rather than requires) to impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege.<sup>58</sup>

### **Immobilization, impoundment, and criminal forfeiture**

The following table sets forth the immobilization, impoundment, and forfeiture penalties for the offense of driving under financial responsibility law suspension or cancellation under existing law and for the offense of driving under financial responsibility law suspension or cancellation or driving under a nonpayment of judgment suspension under the bill. The penalties apply in all cases in which the vehicle is registered in the name of the offender. The penalties under the bill apply if the offender previously has been convicted of or pleaded guilty to one or more violations of driving under financial responsibility law suspension or cancellation, driving under a nonpayment of judgment suspension, driving under suspension under the bill, driving under suspension or in violation of a license restriction under R.C. 4510.11, or a substantially equivalent municipal offense (referred to collectively in the table as "predicate offenses").

<b>Existing law</b>	<b>Sub. H.B. 5</b>	<b>Existing penalty</b>	<b>Penalty under Sub. H.B. 5</b>
The offender has not been convicted of a driving under financial responsibility law suspension or cancellation within five years (R.C.	Within three years of the offense, the offender previously has been convicted of or pleaded guilty to one predicate offense (R.C. 4510.16(G)(1)).	Discretionary immobilization for no more than 30 days of the vehicle involved in the offense and impoundment for no more than 30 days of	Discretionary immobilization for 30 days of the vehicle involved in the offense and impoundment for 30 days of the license

<sup>57</sup> R.C. 4510.16(E).

<sup>58</sup> R.C. 4510.16(D)(2).

Existing law	Sub. H.B. 5	Existing penalty	Penalty under Sub. H.B. 5
4510.16(G)(1)).		the license plates of that vehicle (R.C. 4510.16(G)(1)).	plates of that vehicle in accordance with Ohio law regarding immobilization orders (R.C. 4510.16(G)(1)).
Within five years of the offense, the offender has been convicted of or pleaded guilty to one violation of driving under financial responsibility law suspension or cancellation or a substantially similar municipal ordinance (R.C. 4510.16(G)(2)).	Within three years of the offense, the offender has been convicted of or pleaded guilty to two predicate offenses (R.C. 4510.16(G)(2)).	Mandatory immobilization for 60 days of the vehicle involved in the offense and impoundment for 60 days of the license plates of that vehicle (R.C. 4510.16(G)(2)).	Discretionary immobilization for 60 days of the vehicle involved in the offense and impoundment for 60 days of the license plates of that vehicle in accordance with Ohio law regarding immobilization orders (R.C. 4510.16(G)(2)).
Within five years of the offense, the offender has been convicted of or pleaded guilty to two or more violations of driving under financial responsibility law suspension or cancellation, or a substantially similar municipal ordinance (R.C. 4510.16(G)(3)).	Within three years of the offense, the offender has been convicted of or pleaded guilty to three or more predicate offenses (R.C. 4510.16(G)(3)).	Mandatory criminal forfeiture to the state of the vehicle involved in the offense (R.C. 4510.16(G)(3)).	Discretionary criminal forfeiture to the state of the vehicle involved in the offense (R.C. 4510.16(G)(3)).

The bill requires that an order for criminal forfeiture be issued and enforced under the law regarding criminal forfeitures. Upon receipt of a copy of the order from the court, neither the Registrar of Motor Vehicles nor a deputy registrar can accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial must be five years after the date of the order unless, during that period, the court having jurisdiction of the offense that led to the order terminates the forfeiture and notifies the Registrar of the termination. The Registrar then must take the necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle.<sup>59</sup>

<sup>59</sup> R.C. 4510.16(I).

## **Additional sanctions for violations of a municipal ordinance that is substantially similar to driving under financial responsibility law suspension or cancellation**

The bill removes an existing provision that provides that if a person is convicted of or pleads guilty to a violation of a municipal ordinance that is substantially equivalent to driving under financial responsibility law suspension or cancellation, if the vehicle the offender was operating at the time of the offense is registered in the offender's name, and if, within five years of the current offense, the offender has not been convicted of or pleaded guilty to one or more violations of that offense, the court, in addition to or independent of any sentence that it imposes upon the offender for the offense, may order the immobilization for not more than 30 days of the vehicle the offender was operating at the time of the offense and the impoundment for not more than 30 days of the identification license plates of that vehicle.<sup>60</sup>

### **Immobilization, impoundment, and criminal forfeiture**

The bill modifies the existing provision regarding the situation where a person is convicted of or pleads guilty to a violation of a municipal ordinance that is substantially equivalent to driving under financial responsibility law suspension or cancellation or former R.C. 4507.02(B)(1) (operation of a motor vehicle by another person during a period of suspension or revocation) by removing the provision that if, within five years of the current offense, the offender has been convicted of or pleaded guilty to one or more violations of driving under financial responsibility law suspension or cancellation and providing that the court, in addition to or independent of any sentence that it imposes upon the offender for the offense, may (instead of shall) do whichever of the following is applicable in the following table<sup>61</sup> (in the table, the term "predicate offense" refers to any violation of a municipal ordinance that is substantially equivalent to driving under financial responsibility law suspension or cancellation or the former prohibition against operation of a motor vehicle by another person during a period of suspension or revocation, of the prohibition against driving under suspension or in violation of a license restriction under R.C. 4510.11, under suspension under the bill, under financial law suspension or cancellation, or under a nonpayment of judgment suspension, or of a substantially equivalent municipal ordinance):

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<sup>60</sup> R.C. 4510.161(B)(1).

<sup>61</sup> R.C. 4510.161(B)(1).

Existing law	Sub. H.B. 5	Existing penalty	Penalty under Sub. H.B. 5
N/A	The vehicle is registered in the offender's name and, within three years of the current offense, the offender previously has been convicted of or pleaded guilty to one predicate offense (R.C. 4510.16(B)(1)).	N/A	Discretionary immobilization of the vehicle involved for 30 days and impoundment of that vehicle's license plates for 30 days in accordance with Ohio law regarding immobilization orders (R.C. 4510.161(B)(1)).
Within five years of the current offense, the offender has been convicted of or pleaded guilty to one violation of a municipal ordinance that is substantially equivalent to driving under financial responsibility law suspension or cancellation or the former prohibition against operation of a motor vehicle by another person during a period of suspension or revocation (hereafter "such violations") (R.C. 4510.161(B)(2)(a)).	The vehicle is registered in the offender's name and, within three years of the current offense, the offender previously has been convicted of or pleaded guilty to two predicate offenses (R.C. 4510.161(B)(2)).	Mandatory immobilization for 60 days of the vehicle the offender was operating at the time of the offense and impoundment for 60 days of the identification plates of that vehicle (R.C. 4510.161(B)(2)(a)).	Discretionary immobilization for 60 days of the vehicle involved in the offense and impoundment of that vehicle's license plates for 60 days in accordance with Ohio law regarding immobilization orders (R.C. 4510.161(B)(2)).
Within five years of the current offense, the offender has been convicted of or pleaded guilty to two or more such violations (R.C.	The vehicle is registered in the offender's name and within three years of the current offense, the offender previously has been convicted of or pleaded guilty to three or more predicate offenses (R.C.	Mandatory criminal forfeiture to the state of the vehicle the offender was operating at the time of the offense (R.C.	Discretionary criminal forfeiture to the state of the vehicle the offender was operating at the

Existing law	Sub. H.B. 5	Existing penalty	Penalty under Sub. H.B. 5
4510.161(B)(2)(b)).	4510.161(B)(3)).	4510.161(B)(3)).	time of the offense. <sup>62</sup> (R.C. 4510.161(B)(3).)
Within five years of the current offense, the offender has not been convicted of or pleaded guilty to driving under OVI suspension or former R.C. 4507.02(D)(2) (operating a motor vehicle during a period of suspension) or a substantially equivalent municipal ordinance (R.C. 4510.161(C)(1)).	Within six years of the current offense, the offender has not been convicted of or pleaded guilty to driving under OVI suspension or former R.C. 4507.02(D)(2) (operating a motor vehicle during a period of suspension) or a substantially equivalent municipal ordinance (R.C. 4510.161(C)(1)).	Mandatory immobilization for 30 days of the vehicle the offender was operating at the time of the offense and impoundment for 30 days of the identification license plates of that vehicle (R.C. 4510.161(C)(1)).	Mandatory immobilization for 30 days of the vehicle involved in the offense and impoundment for 30 days of the license plates of that vehicle in accordance with Ohio law regarding immobilization orders (R.C. 4510.161(C)(1)).
Within five years of the current offense, the offender has been convicted of or pleaded guilty to driving under OVI suspension or former R.C. 4507.02(D)(2) (operating a motor vehicle during a period of suspension) or a substantially equivalent municipal ordinance (R.C. 4510.161(C)(2)).	Within six years of the current offense, the offender has been convicted of or pleaded guilty to driving under OVI suspension or former R.C. 4507.02(D)(2) (operating a motor vehicle during a period of suspension) or a substantially equivalent municipal ordinance (R.C. 4510.161(C)(2)).	Mandatory immobilization for 60 days of the vehicle the offender was operating at the time of the offense and the impoundment for 60 days of the identification license plates of that vehicle (R.C. 4510.161(C)(2)).	Mandatory immobilization for 60 days of the vehicle involved in the offense and the impoundment for 60 days of the license plates of that vehicle in accordance with Ohio law regarding immobilization orders (R.C. 4510.161(C)(2)).
Within five years of the current offense, the offender has been convicted of or	Within six years of the current offense, the offender has been convicted of or pleaded guilty to two or more violations of	Mandatory criminal forfeiture to the state of the vehicle the offender was	Same as existing law.

<sup>62</sup> If title to a motor vehicle that is subject to an order for criminal forfeiture is assigned or transferred and the law regarding the criminal forfeiture of a vehicle applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the motor vehicle as determined by the publications of the National Automobile Dealers Association. The proceeds from any fine so imposed must be distributed in accordance with Ohio law regarding the criminal forfeiture of a vehicle.

Existing law	Sub. H.B. 5	Existing penalty	Penalty under Sub. H.B. 5
pleaded guilty to two or more violations of driving under OVI suspension or former R.C. 4507.02(D)(2) (operating a motor vehicle during a period of suspension) or a substantially equivalent municipal ordinance (R.C. 4510.161(C)(3)).	driving under OVI suspension or former R.C. 4507.02(D)(2) (operating a motor vehicle during a period of suspension) or a substantially equivalent municipal ordinance (R.C. 4510.161(C)(3)).	operating at the time of the offense (R.C. 4510.161(C)(3)).	

Existing law provides that an order for immobilization and impoundment under the provision described in the preceding paragraph must be issued and enforced in accordance with the law regarding immobilization orders. The bill requires that those orders must also be issued and enforced in accordance with the law regarding permitting operation of a vehicle by an unlicensed driver. The bill also prohibits the court from releasing a vehicle from immobilization unless the court is presented with current proof of financial responsibility with respect to that vehicle. Proof of financial responsibility means proof of ability to respond in damages for liability arising out of ownership, use, or maintenance of a motor vehicle in the amount of \$12,500 for bodily injury or death to one person in one accident, \$25,000 for bodily injury or death to two or more persons in one accident, or \$7,500 for injury to property in one accident.<sup>63</sup>

The bill requires that an order for criminal forfeiture of a vehicle be issued and enforced under the law regarding criminal forfeitures of vehicles. Upon receipt of a copy of the order from the court, neither the Registrar of Motor Vehicles nor a deputy registrar can accept any application for the registration or transfer of registration of any motor vehicle owned or leased by the person named in the declaration of forfeiture. The period of registration denial must be five years after the date of the order unless, during that period, the court having jurisdiction of the offense that led to the order terminates the forfeiture and notifies the Registrar of the termination. The Registrar then must take the necessary measures to permit the person to register a vehicle owned or leased by the person or to transfer registration of the vehicle.<sup>64</sup>

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<sup>63</sup> R.C. 4510.161(D).

<sup>64</sup> R.C. 4510.161(E).

## **Failure to reinstate a license**

Existing law, unchanged by the bill, prohibits any person whose driver's license, commercial driver's license, temporary instruction permit, or nonresident's operating privilege has been suspended from operating any motor vehicle after the suspension has expired unless the person has complied with all license reinstatement requirements imposed by the court, the Bureau of Motor Vehicles, or another Revised Code provision. Whoever violates this prohibition is guilty of failure to reinstate a license.

### **Penalties**

The bill provides that failure to reinstate a license must be punished as follows:<sup>65</sup>

(1) Except as provided in (2) below, failure to reinstate a license is an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender must be sentenced pursuant to the Misdemeanor Sentencing Law, except that the offender cannot be sentenced to a jail term or a community residential sanction. The offender may be fined up to \$1,000, and the offender may be ordered to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt that may be filed in the underlying case.

(2) If, within three years of a failure to reinstate a license, the offender previously has pleaded guilty to or been convicted of two or more violations of failure to reinstate a license or a substantially equivalent municipal ordinance, the offender is guilty of a misdemeanor of the first degree.

### **Prima-facie evidence**

The bill also provides that, upon the request or motion of the prosecuting authority, a noncertified copy of the LEADS report or a noncertified copy of a record of the Registrar of Motor Vehicles that shows the name, date of birth, and social security number of a person charged with failure to reinstate a license may be admitted into evidence as prima-facie evidence that the license of the person had not been reinstated at the time of the alleged violation. The person charged with failure to reinstate a license may offer evidence to rebut this prima-facie evidence.<sup>66</sup>

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<sup>65</sup> R.C. 4510.21(C).

<sup>66</sup> R.C. 4510.21(B).

## **Suspension of license for failure to appear or pay a fine**

Under existing law, if a person who has a current valid Ohio driver's, commercial driver's license, or temporary instruction permit is charged with a violation of any Ohio traffic law regarding the operation of a motor vehicle, a violation of any Ohio traffic law regarding carrying equipment or loads, or a violation of any Ohio law regarding motor vehicle crimes that is classified as a misdemeanor of the first, second, third, or fourth degree or with a violation of any substantially equivalent municipal ordinance and if the person either fails to appear in court at the required time and place to answer the charge or pleads guilty to or is found guilty of the violation and fails within the time allowed by the court to pay the fine imposed by the court, the court must declare the forfeiture of the person's license. The bill removes the reference to the classification of misdemeanors, includes the offenses regarding failure to annually register a motor vehicle, the transfer of ownership of a motor vehicle, offenses regarding a temporary license placard or windshield sticker, offenses regarding the display of license plates and validation stickers or temporary license placards or windshield stickers, permitting operation of a motor vehicle by an unlicensed driver, offenses regarding temporary instruction permits, offenses regarding the duty to display license or furnish satisfactory proof of license upon demand, the prohibition against driving under suspension or driving in violation of a license restriction under R.C. 4510.11, driving under suspension, operating a motor vehicle or motorcycle without a license, driving under financial responsibility law suspension or cancellation or driving under a nonpayment of judgment suspension, failure to reinstate a license, offenses regarding a child restraint system, and littering offenses. The bill also allows the court (rather than requires) to declare the forfeiture of the person's license.<sup>67</sup>

## **Seizure of vehicle and removal of license plates upon arrest for certain traffic violations**

Under the bill, if a person violates the prohibition against driving under OVI suspension or a municipal ordinance that is substantially equivalent to that offense, the court must impose sentence upon the person as provided by law or ordinance. The court must order the immobilization of the vehicle the arrested person was operating at the time of, or that was involved in, the offense if registered in the arrested person's name and the impoundment of its license plates under the law regarding immobilization orders and the law regarding driving under OVI suspension or the criminal forfeiture to the state of the vehicle if registered in the arrested person's name under the law regarding the criminal forfeiture of vehicles and the law regarding

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<sup>67</sup> R.C. 4510.22(A).

driving under OVI suspension, whichever is applicable; and the vehicle and its license plates cannot be returned or released to the arrested person.<sup>68</sup>

The bill continues existing law by providing that, if a vehicle and its license plates are seized and are not returned or released to the arrested person, the vehicle and its license plates must be retained until the final disposition of the charge in question. Under the bill, upon the final disposition of that charge, and if the arrested person is convicted of or pleads guilty to driving under OVI suspension or a municipal ordinance that is substantially equivalent to that offense, the court must impose sentence upon the person as provided by law or ordinance and must order the immobilization of the vehicle the person was operating at the time of, or that was involved in, the offense if it is registered in the arrested person's name and the impoundment of its license plates under the law regarding immobilization orders and the law regarding driving under suspension or the criminal forfeiture of the vehicle if it is registered in the arrested person's name under the law regarding criminal forfeiture of vehicles and the law regarding driving under OVI suspension, whichever is applicable.<sup>69</sup>

The bill modifies existing law by allowing the court (instead of requiring) to order the immobilization of the vehicle an arrested person who is convicted of or pleads guilty to wrongful entrustment of a motor vehicle, or a substantially similar municipal ordinance, driving under financial responsibility law suspension or cancellation or driving under a nonpayment of judgment suspension or a municipal ordinance that is substantially equivalent, and the court may immobilize the vehicle under R.C. 4510.16 or 4510.161 was operating at the time of, or that was involved in, the offense if it is registered in the arrested person's name and the impoundment of its license plates under the law regarding immobilization orders and the law regarding driving under financial responsibility law suspension or cancellation or driving under a nonpayment of judgment suspension, the law regarding additional sanctions for violations of a municipal ordinance that is substantially similar to those offenses, or wrongful entrustment of a vehicle or the criminal forfeiture of the vehicle if it is registered in the arrested person's name under the law regarding criminal forfeiture of a vehicle and the law regarding driving under financial responsibility law suspension or cancellation or driving under a nonpayment of judgment suspension, the law regarding additional sanctions for violations of a municipal ordinance that is substantially similar to those offenses, or wrongful entrustment of a vehicle, whichever is applicable.<sup>70</sup>

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<sup>68</sup> R.C. 4510.41(C)(1)(a)(i).

<sup>69</sup> R.C. 4510.41(D)(1).

<sup>70</sup> R.C. 4510.41(D)(1).

## OVI

### **Proof of financial responsibility**

Under the bill, in all cases in which an offender is sentenced for operating a motor vehicle under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle after underage alcohol consumption, the offender must provide the court with proof of financial responsibility. If the offender fails to provide that proof of financial responsibility, the court, in addition to any other penalties provided by law, may order restitution in an amount not exceeding \$5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense. Proof of financial responsibility means proof of ability to respond in damages for liability arising out of ownership, use, or maintenance of a motor vehicle in the amount of \$12,500 for bodily injury or death to one person in one accident, \$25,000 for bodily injury or death to two or more persons in one accident, or \$7,500 for injury to property in one accident.<sup>71</sup>

### **Wrongful entrustment of a motor vehicle**

The bill provides that a person who is guilty of wrongful entrustment of a vehicle must be punished, in part, as follows:<sup>72</sup>

(1) Generally, if the offender knew or had reasonable cause to believe that the other person did not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges, the offender knew or had reasonable cause to believe that the other person's driver's or commercial driver's license or permit or nonresident operating privileges have been suspended or canceled, or the offender knew or had reasonable cause to believe that the other person's act of driving the motor vehicle would violate any prohibition contained in the Financial Responsibility Law, the offender is guilty of an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender must be sentenced pursuant to the Misdemeanor Sentencing Law, except that the offender cannot be sentenced to a jail term or a community residential sanction, and the offender may be fined up to \$1,000 and ordered to serve a term of community service of up to 500 hours. The failure of an offender to complete a term of community service imposed by the court may be punished as indirect criminal contempt that may be filed in the underlying case.

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<sup>71</sup> R.C. 4511.19(G)(7) and (H)(4).

<sup>72</sup> R.C. 4511.203(C).

(2) If, within three years of a violation of one of the prohibitions listed in (1) above, the offender previously has pleaded guilty to or been convicted of two or more violations of one of those prohibitions or a substantially equivalent municipal ordinance, the offender is guilty of a misdemeanor of the first degree.

(3) If the offender knew or had reasonable cause to believe that the other person's act of driving would violate the law regarding operating a motor vehicle under the influence of alcohol, a drug of abuse, or a combination of them or any substantially equivalent municipal ordinance or the offender knew or had reasonable cause to believe that the vehicle was the subject of an immobilization waiver order and the other person is prohibited from operating the vehicle under that order, the offender is guilty of a misdemeanor of the first degree.

### **Class seven suspension**

The bill modifies existing law by allowing the court (instead of requiring) to impose a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege.

### **Immobilization, impoundment, and criminal forfeiture**

The following table sets forth the immobilization, impoundment, and forfeiture penalties for wrongful entrustment of a vehicle under existing law and the bill.

<b>Existing law</b>	<b>Sub. H.B. 5</b>	<b>Existing penalty</b>	<b>Penalty under Sub. H.B. 5</b>
A violation of wrongful entrustment of a motor vehicle (R.C. 4511.203(C)(1)).	Same as existing law (R.C. 4511.203(C)(3)(a)).	Mandatory immobilization, for 30 days, of the vehicle involved in the offense and the impoundment of that vehicle's license plates, issued and enforced under the law regarding immobilization orders (R.C. 4511.203(C)(1)).	Discretionary immobilization, for 30 days, of the vehicle involved in the offense and the impoundment of that vehicle's license plates, issued and enforced under the law regarding immobilization orders (R.C. 4511.203(C)(3)(a)).
The offender has been convicted of or pleaded guilty to one violation of wrongful entrustment of a motor vehicle or a substantially	Same as existing law (R.C. 4511.203(C)(3)(b)).	Mandatory immobilization, for 60 days, of the vehicle involved in the offense and the impoundment of that vehicle's license	Discretionary immobilization, for 60 days, of the vehicle involved in the offense and the impoundment of that vehicle's license

equivalent municipal ordinance (R.C. 4511.203(C)(2)).		plates, issued and enforced under the law regarding immobilization orders (R.C. 4511.203(C)(2)).	plates, issued and enforced under the law regarding immobilization orders (R.C. 4511.203(C)(2)).
The offender previously has been convicted of or pleaded guilty to two or more violations of wrongful entrustment of a motor vehicle or a substantially equivalent municipal ordinance (R.C. 4511.203(C)(3)).	Same as existing law (R.C. 4511.203(C)(3)(c)).	Mandatory criminal forfeiture to the state of the vehicle involved in the offense, issued and enforced under the law regarding criminal forfeiture of a vehicle (R.C. 4511.203(C)(3)).	Discretionary criminal forfeiture to the state of the vehicle involved in the offense, issued and enforced under the law regarding criminal forfeiture of a vehicle (R.C. 4511.203(C)(3)(c)).

**Failure to stop after an accident, failure to stop after a nonpublic road accident, and failure to stop after an accident involving the property of others – proof of financial responsibility**

The bill requires a person who is guilty of failure to stop after an accident, failure to stop after a nonpublic road accident, or failure to stop after an accident involving the property of others to provide the court with proof of financial responsibility. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution in an amount not exceeding \$5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the motor vehicle before, during, or after committing the offense.<sup>73</sup>

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**HISTORY**

ACTION	DATE
Introduced	01-11-11
Reported, H. Judiciary & Ethics	02-02-11
Passed House (95-1)	03-29-11
Reported, S. Judiciary – Civil Justice	05-12-11

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<sup>73</sup> R.C. 4549.02(B), 4549.021(B), and 4549.03(B).

