Jennifer Huntzinger *Legislative Service Commission*

Am. Sub. S.B. 17

127th General Assembly
(As Passed by the General Assembly)

Sens. **Grendell, Harris, Gardner, Schuring, Schaffer, Mason, Carey, Cates, Cafaro, Fedor, Goodman, Jacobson, Mumper, Niehaus, Padgett, Roberts, Sawyer, Faber, Spada, Stivers, Wilson, Boccieri, Morano, Buehrer, Wagoner, Austria**

Reps. **Uecker, Dyer, Sears, Core, DeGeeter, Batchelder, Budish, Chandler, Combs, Dodd, Dolan, Domenick, Evans, Fende, Flowers, Gerberry, J. Hagan, Harwood, Hottinger, Jones, Koziura, Letson, Luckie, Lundy, Nero, Newcomb, Patton, Peterson, Raussen, Schindel, Schlichter, Schneider, Strahorn, Szollosi, Ujvagi, Wagner, White, Yuko**

Effective date: September 30, 2008

ACT SUMMARY

- Expands to include all "equivalent offenses" the list of relevant prior convictions used in the prohibition against a person refusing to submit to a chemical test under the Vehicle Implied Consent Law if the person is arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or both and if within the preceding 20 years the person has certain relevant prior convictions.

- Increases by $50 the minimum fine that an offender who is convicted of or pleads guilty to a state OVI violation is required to pay.

- Provides that the $50 increase described in the previous dot point must be deposited in the special projects fund of the court in which the offender was convicted and must be used exclusively to cover the cost of immobilizing or disabling devices, including certified ignition interlock devices, and remote alcohol monitoring devices for indigent offenders who are required by a judge to use either of these devices and provides that, if the county or municipal corporation in which the offender was convicted does not have a special projects fund, the $50 must be deposited into the Indigent Drivers Interlock and Alcohol Monitoring Fund that the act creates.

- Revises the sentencing provisions for an offender who is convicted of state OVI and who, within six years of the offense, previously has been convicted of or pleaded guilty to one state OVI offense, state OVUAC offense (a violation of R.C. 4511.19(B)), or other equivalent offense by requiring the sentencing court to require the offender to be assessed by an authorized alcohol and drug treatment program and by requiring the offender to follow the treatment recommendations (prior law authorized the court to require attendance at a certified driver's intervention program).

- Revises the sentencing provisions for an offender who is convicted of state OVI and who, within six years of the offense, was convicted of or pleaded guilty to two or more state OVI offenses, state OVUAC offenses, or other equivalent offenses, for an offender who, within 20 years of the offense, was convicted of or pleaded guilty to five or more such offenses, and for an offender who previously was convicted of or pleaded guilty to a felony state OVI by requiring the sentencing court to order the offender to follow the treatment recommendations of the alcohol and drug addiction program in which the offender must participate and by requiring the operator of the program to determine and assess the degree of the offender's alcohol dependency and make recommendations for treatment.

- Provides that expenditures from a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund may be made upon the order of a county, juvenile, or municipal court judge to pay for the cost of an assessment of a person convicted of or found to be a juvenile traffic offender for state OVI by an alcohol and drug addiction program if the person is determined by the court to be unable to pay the cost of the assessment.

- Provides that non-certified alcohol and drug addiction programs that apply to be certified pursuant to R.C. 3793.06 are eligible to receive surplus IDAT funds so long as the application is pending with the Department of Alcohol and Drug Addiction Services.

- Provides that, if the non-certified alcohol and drug addiction program described in the previous dot point withdraws the certification application, the Department of Alcohol and Drug Addiction Services

must notify the court, and the court may not provide the non-certified program with any further surplus funds.

- Requires the court to identify and refer any alcohol and drug addiction program that is not certified under R.C. 3793.06 and that is interested in receiving amounts from surplus IDAT money to the Department of Alcohol and Drug Addiction Services and requires the Department to keep a record of such applicant referrals and submit a report on the referrals each year to the General Assembly.

- Authorizes a court that otherwise would be required to issue a vehicle immobilization order as part of the sentence of a person convicted of state OVI or as a sanction for a person convicted of a municipal OVI violation to waive the vehicle immobilization upon making specified findings regarding the substantial injustice of the order to a family or household member of the offender.

- Specifies that a family or household member described in the previous dot point who permits the offender to operate a vehicle that is subject to an immobilization waiver order is in violation of the offense of wrongful entrustment.

- Creates the offense of operating a motor vehicle in violation of an immobilization waiver, a misdemeanor of the first degree.

- Extends to 45 days the period of the "hard suspension" for a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended as a result of a state or municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of or pleaded guilty to one state OVI offense, state OVUAC offense, or another equivalent offense and provides that on or after the 46th day of suspension, the court may grant limited driving privileges to such an offender but, if the underlying conviction is alcohol-related, the court must issue an order that for the remainder of the period of suspension the offender may not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

- Regarding an offender described in the previous dot point whose underlying conviction is drug-related, permits a court to issue an order that for the remainder of the period of suspension the offender must not

exercise limited driving privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device.

- Requires a court to require an OVI offender who is granted limited driving privileges after a 180-day period or a three-year period of "hard suspension" and whose underlying OVI offense is alcohol-related to utilize a certified ignition interlock device on all vehicles the offender operates for the remainder of the period of suspension.

- Permits a court to require an OVI offender who is granted limited driving privileges after a 180-day period or a three-year period of "hard suspension" and whose underlying OVI offense is drug-related to utilize a certified ignition interlock device on all vehicles the offender operates for the remainder of the period of suspension.

- Extends to 45 days the period of the "hard suspension" of a person's driver's or commercial driver's license or nonresident operating privilege when results of a chemical test following an arrest for state OVI, state OVUAC, or other equivalent offense indicate a prohibited concentration of alcohol or drugs and the person has previously been convicted of or pleaded guilty to one state OVI, state OVUAC, or an equivalent offense within the prior six years.

- Permits the court to require a person who is arrested for state OVI, state OVUAC, or other equivalent offense, whose chemical test results indicate a prohibited concentration of alcohol or drugs, and who, within six years of the date the test was conducted, has been convicted of or pleaded guilty to two state OVI offenses, state OVUAC offenses, or other equivalent offenses to utilize a certified ignition interlock device on all vehicles the offender operates for the remainder of the period of suspension if the offender's underlying arrest is drug-related.

- Permits a court to require an OVI offender who has been convicted of or pleaded guilty to two state OVI offenses, state OVUAC offenses, or other equivalent offenses in the previous six years, who is granted limited driving privileges after a 180-day period of "hard suspension," and whose underlying OVI conviction is drug-related, to utilize a certified ignition interlock device on all vehicles the offender operates for the remainder of the period of suspension.

- Changes the term "immobilizing or disabling device" to "certified ignition interlock device" in parts of the Revised Code providing for hard license suspensions.

- Provides that in any case in which an offender who has previously been convicted of two or more OVI offenses and is granted limited driving privileges and prohibited from operating any motor vehicle that is not equipped with an ignition interlock device operates a motor vehicle that is not equipped with an ignition interlock device, circumvents the device, or tampers with the device, or in any case in which the court receives a notice pursuant to R.C. 4510.46 that such a device prevented an offender described in this dot point from starting a motor vehicle, the court must require the offender to wear a continuous alcohol monitor for a specified period.

- Provides that in any case in which an offender who has previously been convicted of one or more OVI offenses and is granted limited driving privileges and prohibited from operating any motor vehicle that is not equipped with an ignition interlock device operates a motor vehicle that is not equipped with an ignition interlock device, circumvents the device, or tampers with the device, or in any case in which the court receives notice pursuant to R.C. 4510.46 that such a device prevented an offender described in this dot point from starting a motor vehicle, the court may require the offender to wear a continuous alcohol monitor on the first instance and must require the offender to wear a continuous alcohol monitor on a second or subsequent instance for specified periods of time.

- Requires the court to impose an additional $2.50 court cost on an OVI offender when the court grants limited driving privileges after a hard license suspension and requires the offender to utilize an immobilizing or disabling device, including a certified ignition interlock device, requires the court to impose an additional $2.50 court cost on such an offender who "violates" the device in that instance and is required under the act to wear a remote alcohol monitor, and requires that the $2.50 mandatory court cost be transmitted to the state treasury to the credit of the State Highway Safety Fund, to be used by the Department of Public Safety to cover costs associated with the habitual OVI/OMWI Offender Registry created by the act.

- Provides that the court may impose an additional $2.50 court cost on an OVI offender described in previous dot point and provides that, if the court imposes the additional court cost, the clerk of court must retain the court cost and must deposit it in the court's special projects fund.

- Provides that if a court grants limited driving privilege to a person who has been convicted of or pleaded guilty to two, three, or four prior OVI offenses in the previous six years or five OVI offenses in the past 20 years, and who is alleged to have committed a state OVI offense or a violation of a substantially equivalent municipal ordinance, the court must prohibit the person from consuming any beer or intoxicating liquor and may require the person to wear a continuous alcohol monitor until the person is convicted of, pleads guilty to, is found not guilty of the alleged violation, or the charges in the case are dismissed.

- Provides that if a court grants limited driving privilege to a person who has formerly been convicted of a felony OVI offense and is alleged to have committed a state OVI offense or a violation of a substantially equivalent municipal ordinance, the court must prohibit the person from consuming any beer or intoxicating liquor and must require the person to wear a continuous alcohol monitor until the person is convicted of, pleads guilty to, is found not guilty of the alleged violation, or the charges in the case are dismissed.

- Specifies that a county court or a municipal court may require an OVI offender to pay, as a financial sanction, all or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under R.C. 4510.13.

- Requires the Director of Public Safety to publish and make available to courts a list of licensed manufacturers of ignition interlock devices and requires that a manufacturer that desires for its devices to be certified and included on the list first must, annually, obtain a license from the Department of Public Safety.

- Provides for procedures and requirements pertaining to the license described in the previous dot point, including a $100 application fee for the license (to be deposited in the Indigent Drivers Alcohol Treatment Fund), grounds to reject an application for such a license, and an appeals process.

- Requires that every manufacturer of ignition interlock devices that is issued a license must file an annual report and pay, annually, a fee equal to 5% of the amount of net profit the manufacturer earned during a 12-month period specified by the Department that is attributable to sales of that manufacturer's certified ignition interlock devices to purchasers in this state (the fee must be deposited in the Indigent Drivers Alcohol Treatment Fund).

- Requires the Department of Public Safety to remove from the list of certified ignition interlock devices the ignition interlock devices manufactured by a manufacturer that fails to file an annual report with the Department or fails to pay the fee described in the preceding dot point.

- Allows the Director of Public Safety to make an assessment against any licensed manufacturer of ignition interlock devices that fails to file an annual report or pay the fee described in the second preceding dot point.

- Requires the Director to adopt rules governing assessments described in the previous dot point, including rules governing the appeals of such assessments, and rules that adopt a penalty schedule setting forth the monetary penalties to be imposed upon a manufacturer of ignition interlock devices that is issued a license and fails to file an annual report or pay the fee described in the third preceding dot point in a timely manner.

- Provides that a licensed manufacturer of ignition interlock devices that files an annual report with the Department that contains erroneous or incorrect information is guilty of a misdemeanor of the first degree and that the Department must remove from the list of certified ignition interlock devices the ignition interlock devices manufactured by a manufacturer that is found guilty of this offense.

- Provides that an entity that monitors certified ignition interlock devices for or on behalf of a court must inform the court whenever such a device that has been installed in a motor vehicle indicates that it has prevented an offender with a suspended license, permit, or operating privilege and who has been granted limited driving privileges from starting the motor vehicle.

- Provides that upon receipt of the information described in the previous dot point pertaining to a repeat offender, the court must send a notice to the offender stating that because of this instance: (1) if R.C. 4510.13(A)(8) requires the offender to wear a continuous alcohol monitor, the offender is now required to wear a continuous alcohol monitor, (2) the court may increase the period of suspension of the offender's driver's license, permit, or operating privilege from that originally imposed by the court by a factor of two, and (3) the court may increase the period of time during which the offender will be prohibited from exercising any limited driving privileges granted to the offender unless the vehicles the offender operates are equipped with a certified ignition interlock device by a factor of two.

- Specifies that the notice described in the previous dot point must state whether the court will impose the increases described in the previous dot point and, if so, that the increases will take effect 14 days from the date of the notice; provides procedures for an offender's appeal, and provides that in no case may any period of suspension that is increased by a factor of two or any period of time during which the offender is prohibited from exercising limited driving privileges granted to the offender unless the vehicles the offender operates are equipped with a certified ignition interlock device that is increased by a factor of two exceed the maximum period of time for which the court originally was authorized to suspend the offender's license, permit, or operating privilege.

- Regarding an offender who is required to use an immobilizing or disabling device while exercising limited driving privileges, requires the court to notify the offender at the time the court grants the offender limited driving privileges that if the court receives notice that the device prevented the offender from starting the motor vehicle because the device was tampered with or circumvented or because the analysis of the deep-lung breath sample or other method of measuring the concentration of alcohol in the offender's breath indicated the presence of alcohol in the offender's breath in a concentration sufficient to prevent the motor vehicle from starting, the court may increase the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from that originally imposed by the court by a factor of two and may increase the period of time during which the offender will be prohibited from exercising any limited driving privileges

granted to the offender unless the vehicles the offender operates are equipped with a certified ignition interlock device by a factor of two.

- In the provisions that establish and pertain to the offense of wrongful entrustment of a motor vehicle, expands the prohibition so that it also prohibits a person from permitting a motor vehicle owned by the person or under the person's control to be driven by another if the offender knows or has reasonable cause to believe that the vehicle is the subject of an immobilization waiver order issued under the act and the other person is prohibited from operating the vehicle under that order.

- Revises the sentencing provisions for an offender convicted of state OMWI (a violation of R.C. 1547.11(A) or (B)) by replacing the former list of prior convictions that are relevant in determining the penalty with a new, expanded list of "equivalent offenses."

- Provides that, in any criminal prosecution or juvenile court proceeding charging state OMWI or an "equivalent offense that is watercraft-related": (1) the court may admit evidence of the concentration of alcohol, drugs of abuse, or a combination of them in the defendant's bodily substance if a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under the Watercraft Implied Consent Law or if a blood or urine sample is obtained pursuant to a search warrant, and (2) the result of any test of any blood or urine withdrawn and analyzed at a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency pharmacy, emergency facility, or health care practitioner may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the defendant's guilt or innocence.

- In the provision of the Vehicle Implied Consent Law that requires the suspension of the driver's license or permit or nonresident operating privilege of a person who is arrested for state OVI, state OVUAC, "having physical control of a vehicle while under the influence" or a substantially equivalent municipal ordinance, or a municipal OVI ordinance, who is requested to submit to a chemical test of a bodily substance and is read specified required notices, and who refuses to submit to the test, expands the factors used in determining the length of the suspension to include all of the following that occurred within six years of the refusal: (1) prior convictions of the person of state OVI,

state OVUAC, or another "equivalent offense" (this factor is added by the act), and (2) prior refusals to submit to a chemical test (continuing law).

- Adds a new provision to both the Vehicle Implied Consent Law and the Watercraft Implied Consent Law that specifies that: (1) if a person is arrested for any of the list of offenses that subjects a person to either of those Laws and the person has two or more prior convictions of state OVI, state OVUAC, state OMWI, or "equivalent offenses" (OMWI, OVI, and OVUAC), in the prior six years, has five or more such prior convictions within the prior 20 years (OVI and OVUAC), or has a prior felony state OVI conviction (OVI and OVUAC), the arresting law enforcement officer must request the person to submit, and the person must submit, to a chemical test of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine, (2) the officer is required to advise the person of the consequences of refusing to submit to the test, (3) if the person refuses to submit to a chemical test upon request of the officer, the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma, (4) the officer is immune from criminal and civil liability based upon any claim for acts taken under the provision described in clause (3) unless the officer acted with malicious purpose, in bad faith, or in a wanton or reckless manner, and (5) if the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended as a "prohibited concentration suspension."

- Explicitly extends an existing qualified immunity from criminal or civil liability to the persons who withdraw blood from a person pursuant to the Watercraft Implied Consent Law or the Vehicle Implied Consent Law.

- Expands the definition of "equivalent offense" that applies to R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law to additionally include (1) state OMWI, (2) a violation of a municipal ordinance that is substantially equivalent to

state OMWI, (3) a violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OMWI, and (4) a violation of a former Ohio law that was substantially equivalent to state OMWI.

- Replaces the watercraft-related definition of "equivalent violation" with the redefined OVI-related "equivalent offense" definition.

- Defines the term "equivalent offense that is vehicle-related" for purposes of R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law.

- Defines the term "equivalent offense that is watercraft-related" for purposes of state OMWI and the Watercraft Implied Consent Law.

- Modifies the provisions that govern the requirements for an immobilizing or disabling device that is an ignition interlock device to additionally (1) require the manufacturer of the device to submit to the Department of Public Safety a certificate from an independent testing laboratory indicating that the device meets or exceeds the standards of the federal National Highway Traffic Safety Administration, and (2) require the device to have operating and functional features that make circumvention difficult and that do not interfere with the normal use of the vehicle.

- Requires the Department of Public Safety to establish a State Registry of Ohio's Habitual OVI/OMWI Offenders and an Internet database, both of which are public records, containing specified information about persons who on or after the effective date of the act receive their fifth or subsequent conviction within the preceding 20 years for state OVI, state OVUAC, municipal OVI, having physical control of a vehicle while under the influence or a substantially equivalent municipal ordinance, state OMWI, a violation of a municipal ordinance substantially equivalent to state OMWI, or another "equivalent offense," and requires a court that convicts a person for any of those offenses for a fifth or subsequent time to send to the Department of Public Safety specified information.

- Provides that if a defendant claims a constitutional defect in any prior conviction when it is necessary to prove such a conviction for sentencing and other purposes, the defendant has the burden of proving the defect by a preponderance of the evidence.

- Increases by $50 the cost of the license reinstatement fee and directs this $50 to the Indigent Drivers Interlock and Alcohol Monitoring Fund that the act creates.

- Establishes the Indigent Drivers Interlock and Alcohol Monitoring Fund in the state treasury and provides that money in the fund must be distributed by the Department of Public Safety to the county, county juvenile, and municipal indigent drivers interlock and alcohol monitoring funds that the act also establishes.

- Provides that the money in the indigent drivers interlock and alcohol monitoring funds described in the previous dot point must be used only to pay the cost of an immobilizing or disabling device, including a certified ignition interlock device, or an alcohol monitoring device used by an offender or juvenile offender who is ordered to use the device by a county, county juvenile, or municipal court judge and who is determined by the county, juvenile, or municipal court judge not to have the means to pay for the person's use of the device.

- Provides that money in a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund may only be used to pay for the cost of alcohol monitoring in conjunction with treatment for an indigent offender when money in the Indigent Drivers Interlock and Alcohol Monitoring Fund is exhausted.

- Provides that if the court declares a surplus in the Indigent Drivers Alcohol Treatment Fund, the court may expend the amount of the surplus for all or part of the cost of purchasing electronic continuous alcohol monitoring devices to be used in conjunction with treatment only upon exhaustion of money in the Indigent Drivers Interlock and Alcohol Monitoring Fund for the use of an alcohol monitoring device.

- Requires the court to use the indigent client eligibility guidelines and the standards of indigency established by the State Public Defender to determine whether an offender does not have the means to pay for the offender's attendance at an alcohol and drug addiction treatment program and to determine whether an alleged offender or delinquent child is unable to pay the costs of an alcohol and drug abuse assessment and treatment.

TABLE OF CONTENTS

CONTENT AND OPERATION

Definition of "equivalent offense" as used in OVI and OMWI laws

Prior law

Prior law defined "equivalent violation" for purposes of the offense of OMWI and the Watercraft Implied Consent Law as a violation of a municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to the offense of state OMWI (R.C. 1547.11(I)).

Prior law defined "equivalent offense" for purposes of R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law, as any of the following:

(1) State OVI or state OVUAC;

(2) A violation of a municipal OVI ordinance;

(3) A violation of R.C. 2903.04 (involuntary manslaughter) in a case in which the offender was subject to the sanctions described in division (D) of that section;

(4) A violation of division (A)(1) of R.C. 2903.06 or 2903.08 (aggravated vehicular homicide based on an OVI violation and aggravated vehicular assault) or a municipal ordinance that is substantially equivalent to either of those divisions;

(5) A violation of R.C. 2903.06(A)(2), (3), or (4), R.C. 2903.08(A)(2), or former R.C. 2903.07 (all the vehicular homicide type offenses and vehicular assault type offenses not covered by paragraph (4)), or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a

case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;

(6) A violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OVI or state OVUAC;

(7) A violation of a former Ohio law that was substantially equivalent to state OVI or state OVUAC (R.C. 4511.181).

Operation of the act

Equivalent offense. The act expands the existing R.C. 4511.181 definition of the term "equivalent offense" and replaces the existing R.C. 1547.11 definition of the term "equivalent violation" with the expanded R.C. 4511.181 definition of the term "equivalent offense." Under the act, as used in state OMWI, the Watercraft Implied Consent Law, and R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law, "equivalent offense" means any of the following (R.C. 1547.11(I) and 4511.181(A)):

(1) Any offense listed in paragraph (1), (2), (3), (4), (5), (6), or (7) of the existing definition (see "***Prior law***," above);

(2) State OMWI;

(3) A violation of a municipal ordinance prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on Ohio waters while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on Ohio waters with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine;

(4) A violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OMWI;

(5) A violation of a former Ohio law that was substantially equivalent to state OMWI.

Equivalent offense that is vehicle-related. Under the act, for purposes of R.C. 4511.19 to 4511.197, including state OVI, state OVUAC, and the Vehicle Implied Consent Law, "equivalent offense that is vehicle-related" means an

equivalent offense that is any of the following (R.C. 4511.181(F)): (1) a violation that is listed in paragraphs (1) to (5), above, under the existing law definition of "equivalent offense," (2) a violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OVI or state OVUAC, or (3) a violation of a former Ohio law that was substantially equivalent to state OVI or state OVUAC.

The act substitutes this term for the current term of "equivalent offense" that is used in provisions of the statute containing the offense of OVI that pertain to the charging of a person with a vehicle-related offense or the trial of a person charged with a vehicle-related offense but that do involve any consideration of any prior convictions of the person of other offenses (R.C. 4511.19(D)(1)(a) and (b) and (D)(2)).

Equivalent offense that is watercraft-related. Under the act, for purposes of state OMWI and the Watercraft Implied Consent Law, "equivalent offense that is watercraft-related" means an equivalent offense that is any of the following (R.C. 1547.11(I)(6)): (1) a violation that is listed in paragraph (2) or (3), above, under the act's modified definition of "equivalent offense," (2) a violation of an existing or former municipal ordinance, law of a state other than Ohio, or law of the United States that is substantially equivalent to state OMWI, or (3) a violation of a former Ohio law that was substantially equivalent to state OMWI.

The act substitutes this term for the current term of "equivalent violation" that is used in provisions of the statute containing the offense of OMWI that pertain to the charging of a person with a watercraft-related offense or the trial of a person charged with a watercraft-related offense but that do involve any consideration of any prior convictions of the person of other offenses (R.C. 1547.11(D)(1)(b) and (D)(2)) and makes similar clarifying changes in a few other similar provisions (R.C. 1547.11(E)(1) and (F)(1)).

State OVI prohibitions

Continuing law prohibits a person from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply: (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person has a concentration of .08 of one per cent or more but less than .17 of one per cent by weight per unit volume of alcohol in the person's whole blood, (3) the person has a concentration of .096 of one per cent or more but less than .204 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person has a concentration of .08 of one gram or more but less than .17 of one gram by weight of alcohol per 210 liters of the person's breath, (5) the person has a concentration of .11 of one gram or more but less than .238 of one gram by weight of alcohol per 100

milliliters of the person's urine, (6) the person has a concentration of .17 of one per cent or more by weight per unit volume of alcohol in the person's whole blood, (7) the person has a concentration of .204 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (8) the person has a concentration of .17 of one gram or more by weight of alcohol per 210 liters of the person's breath, (9) the person has a concentration of .238 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, or (10) the person has a concentration of any of a list of controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds a specified concentration of the controlled substance or metabolite, as described in **COMMENT** 1. (R.C. 4511.19(A)(1).)

Law largely unchanged by the act also prohibits a person who, within 20 years of the conduct described in clause (1) of this paragraph, previously has been convicted of or pleaded guilty to a violation of the prohibition described in this paragraph, the prohibition described in the preceding paragraph, R.C. 4511.19(B) (state OVUAC, see **COMMENT** 2), or a *municipal OVI offense* from doing both of the following: (1) operating any vehicle, streetcar, or trackless trolley within this state while under the influence of alcohol, a drug of abuse, or a combination of them, and (2) subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in clause (1), being asked by a law enforcement officer to submit to a chemical test or tests under R.C. 4511.191 (the Vehicle Implied Consent Law), and being advised by the officer in accordance with R.C. 4511.192 of the consequences of the person's refusal or submission to the test or tests, refusing to submit to the test or tests. (R.C. 4511.19(A)(2).) The act changes the reference to "a municipal OVI offense" in this prohibition to "any other equivalent offense." This change expands the number of offenders potentially subject to this prohibition.

A violation of any of the prohibitions in clauses (1) to (9) of the second preceding paragraph or the prohibition described in the preceding paragraph is the offense of "operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them." A violation of the prohibition described in clause (10) of the second preceding paragraph is the offense of "operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance." Hereafter, both of the offenses are referred to as "state OVI." In subsequent portions of this analysis, references to "high-amount state OVI" mean violations of a prohibition set forth in clause (6), (7), (8), or (9) of the second preceding paragraph, and references to "division (A)(2) state OVI" mean violations of the prohibition set forth in the preceding paragraph. The offense of state OVI is punished as described below in "***State OVI penalties***."

State OVI penalties

Operation of the act

The act changes the definition of "equivalent offense" that is used in determining the penalty for state OVI and state OVUAC (see "***Definition of "equivalent offense" as used in OVI and OMWI laws***," above). Offenders with one or more prior convictions of the offenses listed within that definition are subject to more stringent penalties than offenders with no such prior conviction. The act also modifies some of the penalties for repeat state OVI offenders, as follows:

(1) It increases the minimum fine from $325 to $375 that an offender who previously has not been convicted of state OVI, state OVUAC, or another "equivalent offense" is required to pay (R.C. 4511.19(G)(1)(a)).

(2) For an offender who, within six years of the offense, previously has been convicted of one state OVI offense, one state OVUAC offense, or one other equivalent offense, the act provides that, in addition to the jail term or the term of house arrest with monitoring and jail term, the court *must require* the offender to be assessed by an alcohol and drug treatment program that is authorized by R.C. 3793.02 and must order the offender to follow the treatment recommendations of the program. The purpose of the assessment is to determine the degree of the offender's alcohol usage and whether or not treatment is warranted. Upon the request of the court, the program must submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use. The act also increases the minimum fine from $475 to $525 that such an offender is required to pay. (R.C. 4511.19(G)(1)(b)(i), (ii), and (iii).) (Former law authorized the court to require attendance at a driver's intervention program.)

(3) For an offender who, within six years of the offense, previously has been convicted of two state OVI offenses, state OVUAC offenses, or other equivalent offenses, the act expands the existing alcohol and drug addiction program provisions to require the court to require the offender to follow the treatment recommendations of the program. The operator of the program must determine and assess the degree of the offender's alcohol dependency and must make recommendations for treatment. Upon the request of the court, the program must submit the results of the assessment to the court, including all treatment recommendations and clinical diagnoses related to alcohol use. The act also increases the minimum fine from $800 to $850 that such an offender is required to pay. (R.C. 4511.19(G)(1)(c)(iii) and (vi).)

(4) For an offender who, within six years of the offense, previously has been convicted of three or four state OVI offenses, state OVUAC offenses, or

other equivalent offenses or an offender who, within 20 years of the offense, previously has been convicted of five or more violations of that nature, the act increases the minimum fine from $1,300 to $1,350 that such an offender is required to pay. The act also changes the sentencing provision regarding such an offender that pertains to participation in an alcohol and drug addiction program in the same manner as is described above in paragraph (3) regarding an offender who is subject to the provisions described in that paragraph. (R.C. 4511.19(G)(1)(d)(iii) and (vi).)

(5) For an offender who previously has been convicted of or pleaded guilty to state OVI when the offense was a felony, the act changes the sentencing provisions regarding such an offender in the same manner as is described above in paragraph (3) regarding an offender who is subject to the provisions described in that paragraph. (R.C. 4511.19(G)(1)(e)(iii) and (vi).)

Use of $50 increase in mandatory OVI fine

The act provides that the additional $50 of the mandatory OVI fines imposed by the act under R.C. 4511.19(G)(1)(a)(iii), (G)(1)(b)(iii), (G)(1)(c)(iii), (G)(1)(d)(iii), and (G)(1)(e)(iii) and discussed in the prior five paragraphs must be deposited into the special projects fund of the court in which the offender was convicted and that is established under R.C. 2303.201(E)(1) or R.C. 1901.26(B)(1), to be used exclusively to cover the cost of immobilizing or disabling devices, including certified ignition interlock devices and remote alcohol monitoring devices for indigent offenders who are required by a judge to use either of these devices. If the county or municipal corporation in which the offender was convicted does not have such a special projects fund, the $50 must be deposited into the Indigent Drivers Interlock and Alcohol Monitoring Fund under R.C. 4511.191(I). (R.C. 4511.19(G)(5)(e).)

Cost of an assessment. The act provides that expenditures from a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund may be made upon the order of a county, juvenile, or municipal court judge to pay for the cost of an assessment of a person convicted of or found to be a juvenile traffic offender for state OVI or a substantially equivalent municipal ordinance by an alcohol and drug addiction program described in the previous paragraphs if the person is determined by the court to be unable to pay the cost of the assessment. In addition, upon exhaustion of moneys in the Indigent Drivers Interlock and Alcohol Monitoring Fund for the use of an alcohol monitoring device, a judge may use moneys in one of those local indigent drivers alcohol treatment funds to pay for the continued use of an electronic continuous alcohol monitoring device by an offender or juvenile traffic offender. (R.C. 4511.191(H)(3).)

Vehicle immobilization waiver order

Issuance of vehicle immobilization waiver order

Under the act, if R.C. 4511.19(G) or R.C. 4511.193(B) requires a court, as part of the sentence for state OVI or as a sanction for a violation of a municipal OVI ordinance, to order the immobilization of a vehicle for a specified period of time, notwithstanding the requirement, the court in its discretion may determine not to order the immobilization of the vehicle if both of the following apply: (1) prior to the issuance of the immobilization order, a "family or household member" (defined in the act as having the same meaning as in R.C. 2919.25, except the person must be currently residing with the offender) of the offender files a motion identifying the vehicle and requesting that the immobilization order not be issued because the family or household member who files the motion is completely dependent on the vehicle for the necessities of life and the immobilization of the vehicle would be an undue hardship on the family or household member, and (2) the court determines that the family or household member of the offender is completely dependent on the vehicle for the necessities of life and that the immobilization would be an undue hardship to the family or household member.

If a court pursuant to the above-described provision determines not to order the immobilization of a vehicle that otherwise would be required, the court must issue an order that waives the immobilization required pursuant to either division. The immobilization waiver order will be in effect for the period of time for which the immobilization of the vehicle otherwise would have been required if the immobilization waiver order had not been issued. The immobilization waiver order must specify the period of time for which it is in effect. The court must provide a copy of an immobilization waiver order to the offender and to the family or household member of the offender who filed the motion requesting that the immobilization order not be issued and must place a copy of the immobilization waiver order in the record in the case. The court must impose an immobilization waiver fee of $50 and must determine whether the offender or the family or household member must pay the fee. The clerk must deposit the fee in the state treasury to the credit of the Indigent Drivers Alcohol Treatment Fund.

If a court issues an immobilization waiver order, the order must identify the family or household member who requested the order and the vehicle to which it applies, must identify the family or household members who are permitted to operate the vehicle, and must identify the offender and specify that the offender is not permitted to operate the vehicle. The immobilization waiver order must require that the family or household member who is permitted to operate the vehicle display on the vehicle to which the order applies restricted license plates issued under R.C. 4503.231 (see "***Restricted license plates***," below) for the entire

period for which the immobilization of the vehicle otherwise would have been required.

A family or household member who is permitted to operate a vehicle under an immobilization waiver order may not permit the offender to operate the vehicle. If any such family or household member permits the offender to operate the vehicle, both of the following apply: (1) the court that issued the immobilization waiver order must terminate that order and must issue an immobilization order in accordance with R.C. 4503.233 that applies to the vehicle, and the immobilization order is in effect for the remaining period of time for which the immobilization of the vehicle otherwise would have been required if the immobilization waiver order had not been issued, and (2) the conduct of the family or household member in permitting the offender to operate the vehicle is a violation of the offense of wrongful entrustment of a motor vehicle (see "***Wrongful entrustment***," below). The act also prohibits the offender from operating the motor vehicle that is subject to the immobilization waiver order. Whoever violates this prohibition is guilty of operating a motor vehicle in violation of an immobilization waiver, a misdemeanor of the first degree. (R.C. 4503.235, and a reference in R.C. 4503.233.)

Restricted license plates

The act specifies that no vehicle that may be operated pursuant to an immobilization waiver order issued under the act's provisions described above in "***Issuance of vehicle immobilization waiver order***" may be operated on any highway in Ohio unless the vehicle displays restricted license plates that are a different color from those regularly issued and carry a special serial number that may be readily identified by law enforcement officers. (R.C. 4503.231(A).)

Limited driving privileges under an OVI suspension

The act modifies the conditions of the period of the "hard suspension" for a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction, when the offender, within six years of the offense, previously has been convicted of one or more state OVI offenses, state OVUAC offenses, or other equivalent offenses. Under the act, no judge or mayor may grant limited driving privileges to an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended as a result of a state OVI conviction or as a result of a municipal OVI conviction during the first 45 days of the suspension (as opposed to former law's 30 days), when the offender, within six years of the offense, previously has been convicted of one state OVI offense, state OVUAC offense, or another equivalent offense. The judge may grant limited driving privileges on or after the 46th day of

suspension, and either of the following applies: (1) if the underlying conviction is alcohol-related, the court must issue an order that, except for an exception regarding a vehicle owned by the person's employer (see R.C. 4510.43(C)), for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device, and (2) if the underlying conviction is drug-related, the court in its discretion may issue an order that, except for an exception regarding a vehicle owned by the person's employer (see R.C. 4510.43(C)), for the remainder of the period of suspension the offender must not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device. (R.C. 4510.13(A)(5)(b) and (e).)

The act also provides that if a judge or mayor grants limited driving privileges to an offender who, within six years of the offense, previously has been convicted of two or more state OVI offenses, state OVUAC offenses, or other equivalent offenses or who has previously been convicted of a felony OVI offense and to whom a hard license suspension of either 180 days or three years applies, the court may grant limited driving privileges after the period of the hard license suspension, and either of the following applies: (1) if the underlying conviction is alcohol-related, the court must issue an order that, except for an exception regarding a vehicle owned by the person's employer (see R.C. 4510.43(C)), for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device, and (2) if the underlying conviction is drug-related, the court in its discretion may issue an order that, except for an exception regarding a vehicle owned by the person's employer (see R.C. 4510.43(C)), for the remainder of the period of suspension the offender must not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device. (R.C. 4510.13(A)(5)(b), (f), and (g).)

The act increases from 30 days to 45 days the length of the hard suspension of a person's driver's or commercial driver's license or nonresident operating privilege when results of a chemical test following an arrest for state OVI, state OVUAC, or an equivalent offense indicate a prohibited concentration of alcohol or drugs and the person has previously been convicted of or pleaded guilty to one state OVI, state OVUAC, or an equivalent offense within the prior six years. It does not change the period after which the court may grant limited driving privileges under such a suspension (this may be an error in drafting or typing). (R.C. 4510.10(A)(5)(b).)

The act retains the 180-day hard suspension of a person's driver's or commercial driver's license or nonresident operating privilege when results of a chemical test following an arrest for state OVI, state OVUAC, or an equivalent

offense indicate a prohibited concentration of alcohol or drugs and the person has previously been convicted of or pled guilty to two prior convictions for state OVI, state OVUAC, or other equivalent offenses within the prior six years. However, the act adds the provision that on or after the 181st day of suspension the court may grant limited driving privileges, and either of the following applies: (1) if the underlying arrest is alcohol-related, the court must issue an order that, except for an exception regarding a vehicle owned by the person's employer (see R.C. 4510.43(C)), for the remainder of the period of suspension the offender shall not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device, and (2) if the underlying arrest is drug-related, the court in its discretion may issue an order that, except for an exception regarding a vehicle owned by the person's employer (see R.C. 4510.43(C)), for the remainder of the period of suspension the offender must not exercise the privileges unless the vehicles the offender operates are equipped with a certified ignition interlock device. (R.C. 4510.10(A)(5)(d).)

Mandatory continuous alcohol monitoring for offender who "violates" ignition interlock device while exercising limited driving privileges

The act provides that in certain instances in which the offender operates a motor vehicle that is not equipped with an ignition interlock device, circumvents the device, or tampers with the device or in any case in which the court receives notice pursuant to R.C. 4510.46 that a certified ignition interlock device required by an order issued under R.C. 4510.13(A)(5)(e), (f), or (g) prevented an offender from starting a motor vehicle, the court must require the offender to wear a monitor that provides continuous alcohol monitoring that is remote. If the offender was sentenced under R.C. 4511.19(G)(1)(b) (the offender had one prior OVI conviction in the prior six years), on a first instance the court may require the offender to wear a monitor that provides continuous alcohol monitoring that is remote. On a second instance, the court must require the offender to wear a monitor that provides continuous alcohol monitoring that is remote for a minimum of 40 days. On a third instance or more, the court must require the offender to wear a monitor that provides continuous alcohol monitoring that is remote for a minimum of 60 days.

If the offender was sentenced under R.C. 4511.19(G)(1)(c), (d), or (e) (the offender had two, three, or four OVI convictions in the prior six years, five prior convictions in the prior 20 years, or a prior felony state OVI conviction), on a first instance the court must require the offender to wear a monitor that provides continuous alcohol monitoring that is remote for a minimum of 40 days. On a second instance or more, the court must require the offender to wear a monitor that provides continuous alcohol monitoring that is remote for a minimum of 60 days. (R.C. 4510.13(A)(8).)

Additional court costs when court grants limited driving privileges after hard license suspension and requires offender to use certified ignition interlock device or wear remote alcohol monitor

The act provides that in any case in which the court issues an order prohibiting an offender from exercising limited driving privileges unless the vehicles the offender operates are equipped with an immobilizing or disabling device, including a certified ignition interlock device, or requires an offender to wear a monitor that provides continuous alcohol monitoring that is remote, the court must impose an additional court cost of $2.50 upon the offender. The court may not waive the payment of the $2.50 unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. The clerk of court must retain 100% of this court cost. The clerk of court must transmit 100% of this court cost collected during a month on the first business day of the following month to the state treasury to be credited to the State Highway Safety Fund created under R.C. 4501.06, to be used by the Department of Public Safety to cover costs associated with maintaining the Habitual OVI/OMWI Offender Registry created under R.C. 5502.10. In its discretion the court may impose an additional court cost of $2.50 upon the offender. The clerk of court must retain this $2.50 court cost, if imposed, and shall deposit it in the court's special projects fund that is established under R.C. 2303.201(E)(1) or R.C. 1901.26(B)(1). (R.C. 4510.13(A)(9).)

Increase in license reinstatement fee

The act increases the cost of the license reinstatement fee by $50 (from $425 to $475) and instructs that $50 of the total fee must be credited to the Indigent Drivers Interlock and Alcohol Monitoring Fund that the act creates. The act instructs that money in the fund must be distributed by the Department of Public Safety to the county indigent drivers interlock and alcohol monitoring funds, the county juvenile indigent drivers interlock and alcohol monitoring funds, and the municipal indigent drivers interlock and alcohol monitoring funds that the act requires counties and municipal corporations to establish (see "***Creation of Indigent Drivers Interlock and Alcohol Monitoring Funds***," below). The money in these funds must be used only to pay the cost of an immobilizing or disabling device, including a certified ignition interlock device, or an alcohol monitoring device used by an offender or juvenile offender who is ordered to use the device by a county, juvenile, or municipal court judge and who is determined by that judge to not to have the means to pay for the person's use of the device. (R.C. 4511.191(F)(2) and (F)(2)(h).)

The act also provides that money in a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund may be used to pay for the cost

of the continued use of an electronic continuous alcohol monitoring device in conjunction with a Department of Alcohol and Drug Addiction Service approved treatment program for an indigent offender or indigent juvenile traffic offender when money in the Indigent Drivers Interlock and Alcohol Monitoring Fund is exhausted. Similarly, if a court declares a surplus in a county or municipal indigent drivers alcohol treatment fund, the court may expend the amount of the surplus for all or part of the cost of purchasing electronic continuous alcohol monitoring devices to be used in conjunction with such treatment only upon exhaustion of money in the Indigent Drivers Interlock and Alcohol Monitoring Fund for the use of an alcohol monitoring device. (R.C. 4511.191(H)(3) and (4)(a)(ii).)

Creation of county and municipal indigent drivers interlock and alcohol monitoring funds

The act provides that each county must establish an indigent drivers interlock and alcohol monitoring fund and a juvenile indigent drivers interlock and alcohol treatment fund, and each municipal corporation in which there is a municipal court must establish an indigent drivers interlock and alcohol monitoring fund. All revenue that the General Assembly appropriates to the Indigent Drivers Interlock and Alcohol Monitoring Fund for transfer to a county indigent drivers interlock and alcohol monitoring fund, a county juvenile indigent drivers interlock and alcohol monitoring fund, or a municipal indigent drivers interlock and alcohol monitoring fund, all portions of license reinstatement fees that are paid under R.C. 4511.191(F)(2) and that are credited under that division to the Indigent Drivers Interlock and Alcohol Monitoring Fund in the state treasury, and all portions of fines that are paid under R.C. 4511.19(G) and that are credited by R.C. 4511.19(G)(5)(e) to the Indigent Drivers Interlock and Alcohol Monitoring Fund in the state treasury must be deposited in the appropriate fund in accordance with the paragraph below.

The portion of the license reinstatement fee ($50) that is paid under R.C. 4511.191(F) and the portion of the fine paid under R.C. 4511.19(G) and that is credited under either division to the Indigent Drivers Interlock and Alcohol Monitoring Fund must be deposited into a county indigent drivers interlock and alcohol monitoring fund, a county juvenile indigent drivers interlock and alcohol monitoring fund, or a municipal indigent drivers interlock and alcohol monitoring fund as follows:

(1) If the fee or fine is paid by a person who was charged in a county court with the violation that resulted in the suspension or fine, the portion must be deposited into the county indigent drivers interlock and alcohol monitoring fund under the control of that court;

(2) If the fee or fine is paid by a person who was charged in a juvenile court with the violation that resulted in the suspension or fine, the portion must be deposited into the county juvenile indigent drivers interlock and alcohol monitoring fund established in the county served by the court;

(3) If the fee or fine is paid by a person who was charged in a municipal court with the violation that resulted in the suspension, the portion must be deposited into the municipal indigent drivers interlock and alcohol monitoring fund under the control of that court. (R.C. 4511.191(I).)

Circumstances under which non-certified treatment programs may receive surplus IDAT funds

The act provides that the court must identify and refer any alcohol and drug addiction program that is not certified under R.C. 3793.06 and that is interested in receiving amounts from a surplus declared in the IDAT fund to the Department of Alcohol and Drug Addiction Services in order for the program to become a certified alcohol and drug treatment program. The Department must keep a record of applicant referrals received and must submit a report on the referrals each year to the General Assembly. If a program interested in becoming certified makes an application to become certified pursuant to R.C. 3793.06, the program is eligible to receive surplus funds as long as the application is pending with the Department. The Department must offer technical assistance to the applicant. If the interested program withdraws the certification application, the Department must notify the court, and the court may not provide the interested program with any further surplus funds. (R.C. 4511.191(H)(6).)

Continuous alcohol monitoring after arrest

The act provides that if a court grants limited driving privilege to a person who is described in the subsequent paragraph and who is alleged to have committed a state OVI offense or a violation of a substantially equivalent municipal ordinance, the court as a condition of granting limited driving privileges may prohibit the person from consuming any beer or intoxicating liquor and may require the person to wear a monitor that provides continuous alcohol monitoring that is remote. If the court imposes the requirement, the court must require the person to wear the monitor until the person is convicted of, pleads guilty to, or is found not guilty of the alleged violation or the charges in the case are dismissed. Any consumption by the person of beer or intoxicating liquor prior to that time is grounds for revocation by the court of the person's limited driving privilege. The person must pay all costs associated with the monitor, including the cost of remote monitoring. (R.C. 4511.198(A)(1).)

The preceding paragraph applies to the following persons (R.C. 4511.198(B)):

(1) A person who is alleged to have committed a violation of R.C. 4511.19(A) (state OVI) and who, if convicted of the alleged violation, is required to be sentenced under R.C. 4511.19(G)(1)(c) or (d) (alleged offender has been convicted of or pleaded guilty to two, three, or four prior OVI offenses in past six years or of five OVI offenses in past 20 years);

(2) A person who is alleged to have committed a violation of a municipal ordinance that is substantially equivalent to R.C. 4511.19(A) and who, if the law enforcement officer who arrested and charged the person with the violation of the municipal ordinance instead had charged the person with a violation of R.C. 4511.19(A), would be required to be sentenced under R.C. 4511.19(G)(1)(c) or (d).

In addition, the act provides that if a court grants limited driving privilege to a person who is described in the subsequent paragraph and who is alleged to have committed a state OVI offense or a violation of a substantially equivalent municipal ordinance, the court as a condition of granting limited driving privileges, unless the court determines otherwise, must prohibit the person from consuming any beer or intoxicating liquor and must require the person to wear a monitor that provides continuous alcohol monitoring that is remote. The court must require the person to wear the monitor until the person is convicted of, pleads guilty to, or is found not guilty of the alleged violation or the charges in the case are dismissed. Any consumption by the person of beer or intoxicating liquor prior to that time is grounds for revocation by the court of the person's limited driving privilege. The person must pay all costs associated with the monitor, including the cost of remote monitoring. (R.C. 4511.198(A)(2).)

The preceding paragraph applies to the following persons (R.C. 4511.198(C)):

(1) A person who is alleged to have committed a violation of R.C. 4511.19(A) (state OVI) and who, if convicted of the alleged violation, is required to be sentenced under R.C. 4511.19(G)(1)(e) (alleged offender was previously convicted of or pleaded guilty to a felony OVI);

(2) A person who is alleged to have committed a violation of a municipal ordinance that is substantially equivalent to R.C. 4511.19(A) and who, if the law enforcement officer who arrested and charged the person with the violation of the municipal ordinance instead had charged the person with a violation of R.C. 4511.19(A), would be required to be sentenced under R.C. 4511.19(G)(1)(e).

Wrongful entrustment of a motor vehicle

Prohibition

Continuing law prohibits a person from permitting a motor vehicle owned by the person or under the person's control to be driven by another if any of the following apply: (1) the offender knows or has reasonable cause to believe that the other person does not have a valid driver's or commercial driver's license or permit or valid nonresident driving privileges, (2) the offender knows or has 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 under any provision of the Revised Code, (3) the offender knows or has reasonable cause to believe that the other person's act of driving the motor vehicle would violate any prohibition contained in R.C. Chapter 4509., or (4) the offender knows or has reasonable cause to believe that the other person's act of driving would be a state OVI offense, a state OVUAC offense, or a violation of any substantially equivalent municipal ordinance. A violation of this prohibition is "wrongful entrustment of a motor vehicle," a misdemeanor of the first degree. The offender is subject to a class seven license suspension and the impoundment or forfeiture of the motor vehicle involved. (R.C. 4511.203.)

The act expands the above prohibition so that it also prohibits a person from permitting a motor vehicle owned by the person or under the person's control to be driven by another if the offender knows or has reasonable cause to believe that the vehicle is the subject of an immobilization waiver order issued under the act and the other person is prohibited from operating the vehicle under that order. The new prohibition is subject to the same prohibitions as under continuing law for the other prohibitions. (R.C. 4511.203(A)(5) and cross references in (B).)

State OMWI prohibitions

Continuing law prohibits a person from operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters if, at the time of the operation, control, or manipulation, any of the following apply: (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person has a concentration of .08 of one per cent or more by weight per unit volume of alcohol in the person's whole blood, (3) the person has a concentration of .096 of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma, (4) the person has a concentration of .11 of one gram or more by weight of alcohol per 100 milliliters of the person's urine, (5) the person has a concentration of .08 of one gram or more by weight of alcohol per 210 liters of the person's breath, or (6) the person has a concentration of any of a list of controlled substances or metabolites of a controlled substance in the person's whole blood,

blood serum or plasma, or urine that equals or exceeds a specified concentration of the controlled substance or metabolite (the concentrations of the controlled substances and metabolites are similar to the concentrations described in **COMMENT** 1 regarding the offense of state OVI). (R.C. 1547.11(A)(1).)

Continuing law also prohibits a person under 21 years of age from operating or being in physical control of any vessel underway or manipulating any water skis, aquaplane, or similar device on Ohio waters if, at the time of the operation, control, or manipulation, any of the following apply: (1) the person has a concentration of at least .02 of one per cent but less than .08 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) the person has a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (3) the person has a concentration of at least .028 of one gram but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine, or (4) the person has a concentration of at least .02 of one gram but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath (R.C. 1547.11(B)).

Hereafter, the offenses described in the two preceding paragraphs are referred to as "state OMWI."

State OMWI penalties

Operation of the act

The act changes the existing penalties for state OMWI only by replacing the list of prior offenses, other than state OMWI, that are classified as prior convictions that are relevant in determining the penalty with a reference to "equivalent offenses," as defined in the act. Offenders with one or more relevant prior convictions are subject to more stringent penalties than offenders with no relevant prior convictions. (R.C. 1547.99(G)(2), (3), and (6)(a).)

Admission of evidence on the concentration of alcohol or a drug of abuse in a state OMWI case

Ways in which admissible evidence may be obtained

Under the act, in any criminal prosecution or juvenile court proceeding charging state OMWI or an "equivalent offense that is watercraft-related," the act replaces the existing term "equivalent violation" with the term "equivalent offense that is watercraft-related," as defined in the act, the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them "in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the

substance withdrawn within three hours of the time of the alleged violation." The act also states that the court may admit evidence on the concentration of *alcohol*, drugs of abuse, or a combination of them when a person submits to a blood, *breath, urine, or other bodily substance* test at the request of a law enforcement officer under the Watercraft Implied Consent Law *or when a blood or urine sample is obtained pursuant to a search warrant* (this is a modification of prior law, with the act adding the language in italics).

The act additionally specifies that, in any criminal prosecution or juvenile court proceeding for a state OMWI violation or an "equivalent offense that is watercraft-related," the result of any test of any blood or urine withdrawn and analyzed at any hospital, ambulatory care facility, long-term care facility, pharmacy, emergency pharmacy, emergency facility, or health care practitioner (health care provider as defined in R.C. 2317.02) may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

The act specifies that the requirement for an analysis in accordance with Director of Health standards and for allowing the person tested to have another chemical test administered by a qualified technician, chemist, or phlebotomist of the person's own choosing apply only to the manners described in the second preceding paragraph by which a court may admit evidence of the alcohol, drug, controlled substance, or metabolite content of a person's bodily substance. (R.C. 1547.11(D)(1) and (3).)

Vehicle Implied Consent Law suspensions

Vehicle Implied Consent Law refusal suspensions

The act provides for consideration of prior related convictions in determining the length of a Vehicle Implied Consent Law refusal suspension. The act does not change the length of the suspensions.

Under the act, a "Vehicle Implied Consent Law refusal suspension" is determined as follows (the changes made by the act are indicated in italics):

(1) Except as provided in paragraph (2), (3), or (4), below, the suspension remains a Class C suspension (a period of one year) under R.C. 4510.02(B);

(2) If the arrested person, within six years of the date of the refusal, had refused one previous request to consent to a chemical test *or had been convicted of or pleaded guilty to one state OVI, state OVUAC, or other equivalent offense (as defined in the act)*, the suspension is a Class B suspension (a period of two years) under R.C. 4510.02(B);

(3) If the arrested person, within six years of the date of the refusal, had refused two previous requests to consent to a chemical test, *had been convicted of or pleaded guilty to two state OVI, state OVUAC, or other equivalent offenses, or had refused one previous request to consent to a chemical test and also had been convicted of or pleaded guilty to one state OVI, state OVUAC, or other equivalent offense*, the suspension is a Class A suspension (a period of three years);

(4) If the arrested person within six years of the date of the refusal, had refused three or more previous requests to consent to a chemical test, *had been convicted of or pleaded guilty to three or more state OVI, state OVUAC, or other equivalent offenses, or had refused a number of previous requests to consent to a chemical test and also had been convicted of or pleaded guilty to a number of state OVI, state OVUAC, or other equivalent offenses that cumulatively total three or more such refusals, convictions, and guilty pleas, each of which violations or offenses arose from an incident other than an incident that led to any of the refusals*, the suspension is for five years. (R.C. 4511.191(B)(1).)

Vehicle Implied Consent Law prohibited concentration suspensions

The act replaces the list of "equivalent offenses," other than state OVI and state OVUAC, that are classified as prior convictions used in determining the length of a Vehicle Implied Consent Law prohibited concentration suspension with a new list of "equivalent offenses," as defined in the act.

The act does not change the length of the suspensions or any of the other continuing provisions governing the suspensions, other than an erroneous cross-reference that is corrected in division (C)(1) of R.C. 4511.191. (R.C. 4511.191(C) and (D).)

For the purpose of determining as described in R.C. 4511.191(F)(2)(c) whether an offender does not have the means to pay for the offender's attendance at an alcohol and drug addiction treatment program or whether an alleged offender or delinquent child is unable to pay the costs specified in R.C. 4511.191(H)(4), the court must use the indigent client eligibility guidelines and the standards of indigency established by the State Public Defender to make the determination (R.C. 4511.191(H)(5)).

Mandatory testing under the Vehicle Implied Consent Law or the Watercraft Implied Consent Law for a person with at least three prior convictions

The act adds a new provision to both the Vehicle Implied Consent Law and the Watercraft Implied Consent Law that requires a person who is arrested for any of the list of offenses that subjects a person to either of those Laws and who has

two or more prior convictions of specified offenses to submit upon request to a chemical test or test under the applicable Law. Specifically, under the act:

(1) If a law enforcement officer arrests a person for operating or being in physical control of a vessel or manipulating any water skis, aquaplane, or similar device in violation of the state's OMWI prohibitions or a substantially equivalent municipal ordinance and if the person previously has been convicted of or pleaded guilty to two or more violations of the state's OMWI prohibitions or other "equivalent offenses" (as defined in the act), the law enforcement officer is required to request the person to submit, and the person must submit, to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine. A law enforcement officer who makes such a request must advise the person at the time of the arrest that if the person refuses to take a chemical test the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. The officer must also advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. The advice must be in written form prescribed by the chief of the division of watercraft and must be read to the person. The form must contain a statement that the form was shown to the person under arrest and read to the person by the arresting officer. The reading of the form must be witnessed by one or more persons, and the witnesses must certify to this fact by signing the form. Except for the provisions regarding the advice that must be given to the person and the right to refuse and effect of a refusal, procedures under continuing law regarding the administration of a chemical test under the Watercraft Implied Consent Law apply to the administration of a chemical test or tests pursuant to this provision. (R.C. 1547.111(B)(1), (C), and (D).)

(2) If a law enforcement officer arrests a person for state OVI, state OVUAC, a violation of R.C. 4511.194 or a substantially equivalent municipal ordinance, or a violation of a municipal OVI ordinance and if the person is required to be sentenced under R.C. 4511.19(G)(1)(c), (d), or (e) for previously being convicted of or pleading guilty to two, three, or four state OVI offenses, state OVUAC offenses, or other equivalent offenses (as defined in the act) within six years of the offense, within 20 years of the offense being convicted of or pleading guilty to five or more violations of that nature, or previously being convicted of or pleading guilty to felony OVI, the law enforcement officer is required to request the person to submit, and the person must submit, to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the alcohol, drug of abuse, controlled substance,

metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine. A law enforcement officer who makes a request pursuant to this provision must advise the person that if the person refuses to take a chemical test the officer may employ whatever reasonable means are necessary to ensure that the person submits to the chemical test. The officer must also advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. Except for the provisions regarding the advice that must be given to the person and the right to refuse and effect of a refusal, procedures under continuing law regarding the administration of a chemical test under the Vehicle Implied Consent Law apply to the administration of a chemical test or tests pursuant to this provision. (R.C. 4511.191(A)(5)(a) and 4511.191(A) to (C).)

(3) If a person refuses to submit to a chemical test upon a request made pursuant to the provision described in either paragraph (1) or (2), above, the law enforcement officer who made the request may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. A law enforcement officer who acts pursuant to this provision to ensure that a person submits to a chemical test of the person's whole blood or blood serum or plasma is immune from criminal and civil liability based upon a claim for assault and battery or any other claim for the acts, unless the officer so acted with malicious purpose, in bad faith, or in a wanton or reckless manner. (R.C. 1547.111(B)(2) and 4511.191(A)(5)(b).)

(4) If a law enforcement officer asks a person under arrest as described above in paragraph (2) to submit to a chemical test or tests under that provision and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, the officer must do all of the following: (a) on behalf of the Registrar, notify the person that, independent of any other penalties or sanctions, the person's Ohio driver's or commercial driver's license or permit or nonresident operating privilege is suspended immediately, that the suspension will last at least until the person's initial appearance on the charge, and that the person may appeal the suspension at the initial appearance or during the period of time ending 30 days after that initial appearance, (b) seize the person's license or permit and immediately forward it to the Registrar (if the person is not in possession of the license or permit, the officer must order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the person is given notice of the suspension and it then is forwarded to the Registrar), (c) verify the person's current residence and, if it differs from that on the person's license or permit, notify the Registrar of the change, and (d) send to the Registrar, within 48 hours after the arrest, a sworn report that states that the officer had reasonable grounds to believe that, at the time

of the arrest, the arrested person was committing state OVI, state OVUAC, a violation of a municipal OVI ordinance, or a violation of R.C. 4511.194 or a substantially equivalent municipal ordinance, that the person was arrested and charged with committing state OVI, state OVUAC, a violation of a municipal OVI ordinance, or a violation of R.C. 4511.194 or a substantially equivalent municipal ordinance, that the person was under arrest as described above in paragraph (2), that the chemical test or tests were performed in accordance with that provision, and that test results indicated a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense. (R.C. 4511.192(D).)

The officer also must advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense (R.C. 4511.19(D)(3)).

Upon receipt of a law enforcement officer's report as described in the second preceding paragraph, the Registrar must enter into the Registrar's records the fact that the person's license or permit or nonresident operating privilege was suspended by the officer and the period of the suspension. The suspension is a Vehicle Implied Consent Law prohibited concentration suspension and the period is that of Vehicle Implied Consent Law prohibited concentration suspension. (R.C. 4511.191(C).)

Immunity for withdrawal of blood

Law generally retained by the act provides that, except as otherwise described in this paragraph, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to R.C. 1547.11 (state OMWI) or 4511.19 (state OVI and state OVUAC), and a hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to R.C. 1547.11 or 4511.19, is immune from criminal or civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity is not available, though, to a person who withdraws blood if the person engages in willful or wanton misconduct. (R.C. 1547.11(G) and 4511.19(F).)

The act modifies the language of the above provision to ensure that it also applies to the specified persons who withdraw blood from a person pursuant to the Watercraft Implied Consent Law or the Vehicle Implied Consent Law. Specifically, under the act, except as otherwise described in this paragraph, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to R.C. 1547.11, 1547.111, 4511.19, or 4511.191, and a hospital, first-aid station, or clinic at which blood is withdrawn

from a person pursuant to R.C. 1547.11, 1547.111, 4511.19, or 4511.191 is immune from criminal or civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. As under continuing law the immunity is not available to a person who withdraws blood if the person engages in willful or wanton misconduct. (R.C. 1547.11(G) and 4511.19(F).)

Certification of ignition interlock devices

Law largely retained by the act

Law largely retained by the act requires the Director of Public Safety, in consultation with the Director of Health and in accordance with the Administrative Procedure Act (the APA), to certify immobilizing and disabling devices and to publish and make available to the courts, without charge, a list of approved devices together with information about the manufacturers of the devices and where they may be obtained (immobilizing and disabling devices are used under certain motor vehicle-related provisions, including provisions related to a grant of limited driving privileges during the period of a license suspension. The manufacturer of an immobilizing or disabling device must pay the cost of obtaining the certification of the device to the Director of Public Safety, who must deposit the payment in the Drivers' Treatment and Intervention Fund established by R.C. 4511.19 and 4511.191.

The Director of Public Safety, in accordance with the APA, also must adopt and publish rules setting forth the requirements for obtaining certification of an immobilizing or disabling device. The Director cannot certify an immobilizing or disabling device under this provision unless it meets the requirements specified and published by the Director in those rules. A certified device may consist of an ignition interlock device, an ignition blocking device initiated by time or magnetic or electronic encoding, an activity monitor, or any other device that reasonably assures compliance with an order granting limited driving privileges. The Director also must adopt rules in accordance with the APA for the design of a warning label that must be affixed to each immobilizing or disabling device upon installation; the label must contain a warning that any person tampering, circumventing, or otherwise misusing the device is subject to a fine, imprisonment, or both and may be subject to civil liability.

The requirements for an immobilizing or disabling device that is an ignition interlock device must include provisions for setting a minimum and maximum calibration range and must include, but are not limited to, specifications that the device complies with all of the following: (1) it does not impede the safe operation of the vehicle, (2) it has features that make circumvention difficult and that do not interfere with the normal use of the vehicle, (3) it correlates well with

established alcohol impairment measures, (4) it works accurately and reliably in an unsupervised environment, (5) it is resistant to tampering and shows evidence of tampering if attempted, (6) it is difficult to circumvent and requires premeditation to do so, (7) it minimizes inconvenience to a sober user, (8) it requires a proper, deep-lung breath sample or other accurate measure of the concentration by weight of alcohol in the breath, (9) it operates reliably over the range of automobile environments, and (10) it is made by a manufacturer covered by product liability insurance.

A court considering the use of a prototype device in a pilot program must advise the Director of Public Safety, 30 days before the use, of the prototype device and its protocol, methodology, manufacturer, and licensor, lessor, other agent, or owner, and the length of the court's pilot program. A prototype device cannot be used for state OVI or OVUAC, a violation of R.C. 4510.14, a violation of a municipal OVI ordinance, or in relation to a suspension imposed under the Vehicle Implied Consent Law. A court that uses a prototype device in a pilot program, periodically during the existence of the program and within 14 days after termination of the program, must report in writing to the Director regarding the effectiveness of the prototype device and the program. (R.C. 4510.43.)

Operation of the act

The act modifies the provisions that govern the requirements for an immobilizing or disabling device that is an ignition interlock device. Under the act, the requirements for an immobilizing or disabling device that is an ignition interlock device *must require that the manufacturer of the device submit to the Department of Public Safety a certificate from an independent testing laboratory indicating that the device meets or exceeds the standards of the federal National Highway Traffic Safety Administration that are in effect at the time of the Director's certification of the device* (language in italics is added by the act), must include provisions for setting a minimum and maximum calibration range, and must include, but are not limited to, specifications that the device complies with all of the following: (1) it does not impede the safe operation of the vehicle, (2) it has features that make circumvention difficult and that do not interfere with the normal use of the vehicle, *and the features are operating and functional* (language in italics is added by the act), and (3) it complies with all of the criteria and requirements described above in clauses (3) to (10) of the third paragraph under "***Law largely retained by the act***." The act also provides that ignition interlock devices must be certified annually (R.C. 4510.43(A)(1) and (2).)

Licensing option for manufacturers of certified ignition interlock devices

The act provides that a manufacturer of ignition interlock devices that desires for its devices to be certified under R.C. 4510.43 and then to be included

on the list of certified devices that the Department of Public Safety compiles and makes available to courts pursuant to that section first must obtain a license from the Department. The Department must adopt any rules that are necessary to implement this licensing requirement.

A manufacturer must apply to the Department for the license and must include all information the Department may require by rule. Each application, including an application for license renewal, must be accompanied by an application fee of $100, which the Department must deposit into the state treasury to the credit of the Indigent Drivers Alcohol Treatment Fund created by R.C. 4511.191.

Upon receipt of a completed application, if the Department finds that a manufacturer has complied with all application requirements, the Department must issue a license to the manufacturer. A manufacturer that has been issued a license under this provision is eligible immediately to have the models of ignition interlock devices it produces certified under R.C. 4510.43 and then included on the list of certified devices that the Department compiles and makes available to courts.

Such a license expires annually on a date selected by the Department. The Department must reject the license application of a manufacturer if any of the following apply: (1) the application is not accompanied by the application fee, (2) the Department finds that the manufacturer has not complied with all application requirements, and (3) the license application is a renewal application and the manufacturer failed to file the annual report or failed to pay the required fee that is equal to 5% of the net profit the manufacturer earned in a 12-month period, as specified in the next paragraph as required by division (B) of this section.

A manufacturer whose license application is rejected by the Department may appeal the decision to the Director of Public Safety. The Director or the Director's designee must hold a hearing on the matter not more than 30 days from the date of the manufacturer's appeal. If the Director or the Director's designee upholds the denial of the manufacturer's application for a license, the manufacturer may appeal the decision to the Franklin County Court of Common Pleas. If the Director or the Director's designee reverses the denial of the manufacturer's application for a license, the Director or the Director's designee must issue a written order directing that the Department issue a license to the manufacturer.

Every manufacturer of ignition interlock devices that is issued a license under this provision must file an annual report with the Department on a form the Department prescribes on or before a date the Department prescribes. The annual report must state the amount of net profit the manufacturer earned during a 12-month period specified by the Department that is attributable to the sales of that

manufacturer's certified ignition interlock devices to purchasers in this state. Each manufacturer must pay a fee equal to 5% of the amount of the net profit described in this division. The Department may permit annual reports to be filed via electronic means.

The Department must deposit all such fees it receives from manufacturers into the state treasury to the credit of the Indigent Drivers Alcohol Treatment Fund created by R.C. 4511.191. All money so deposited into that fund that is paid by the Department of Alcohol and Drug Addiction Services to county indigent drivers alcohol treatment funds, county juvenile indigent drivers alcohol treatment funds, and municipal indigent drivers alcohol treatment funds must be used only as described in R.C. 4511.191(H)(3)(c).

The Director may make an assessment, based on any information in the Director's possession, against any manufacturer that fails to file an annual report or pay the fee explained above. The Director, in accordance with R.C. Chapter 119., must adopt rules governing assessments and assessment procedures and related provisions. In adopting these rules, the Director must incorporate the provisions of R.C. 5751.09 to the greatest extent possible, except that the Director is not required to incorporate any provisions of that section that by their nature are not applicable, appropriate, or necessary to assessments made by the Director.

A manufacturer may appeal the final determination of the Director regarding an assessment made by the Director. The Director, in accordance with R.C. Chapter 119., must adopt rules governing such appeals. In adopting these rules, the Director must incorporate the provisions of R.C. 5717.02 to the greatest extent possible, except that the Director is not required to incorporate any provisions of that section that by their nature are not applicable, appropriate, or necessary to appeals of assessments made by the Director.

The Director, in accordance with R.C. Chapter 119., must adopt a penalty schedule setting forth the monetary penalties to be imposed upon a manufacturer that is issued a license under this section and fails to file an annual report or pay the required fee in a timely manner. The penalty amounts must not exceed the maximum penalty amounts established in R.C. 5751.06 for similar or equivalent facts or circumstances.

The act also provides that: (1) no manufacturer of ignition interlock devices that is required to file an annual report with the Department or pay a fee shall fail to do so, and (2) no manufacturer of ignition interlock devices that is required to file an annual report with the Department shall file a report that contains incorrect or erroneous information. The act provides that whoever violates provision (2), above, of this provision is guilty of a misdemeanor of the first degree. The Department must remove from the list of certified devices the

ignition interlock devices manufactured by a manufacturer that violates either provision (1) or (2), above. (R.C. 4510.45.)

Notification to court when ignition interlock device indicates it prevented offender from starting motor vehicle

The act specifies that a governmental agency, bureau, department, or office, or a private corporation, or any other entity that monitors certified ignition interlock devices for or on behalf of a court must inform the court whenever such a device that has been installed in a motor vehicle indicates that it has prevented an offender whose driver's or commercial driver's license or permit or nonresident operating privilege has been suspended by a court under R.C. 4511.19(G)(1)(a), (b), (c), (d), or (e) and who has been granted limited driving privileges under R.C. 4510.13 from starting the motor vehicle because the device was tampered with or circumvented or because the analysis of the deep-lung breath sample or other method employed by the ignition interlock device to measure the concentration by weight of alcohol in the offender's breath indicated the presence of alcohol in the offender's breath in a concentration sufficient to prevent the ignition interlock device from permitting the motor vehicle to be started.

Upon receipt of the information described in the previous paragraph pertaining to an offender whose license or operating privilege has been suspended by a court under R.C. 4511.19(G)(1)(b), (c), (d), or (e) (repeat offenders), the court must send a notice to the offender stating that it has received evidence of an instance described in the prior paragraph. If a court, pursuant to R.C. 4510.13(A)(8) requires the offender to wear a monitor that provides for continuous alcohol monitoring the notice shall state that the offender is required to wear the monitor in accordance with R.C. 4510.13(A)(8). The notice must further state that because of this instance the court may increase the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from that originally imposed by the court by a factor of two and may increase the period of time during which the offender will be prohibited from exercising any limited driving privileges granted to the offender unless the vehicles the offender operates are equipped with a certified ignition interlock device by a factor of two.

The notice must state whether the court will impose these increases and, if so, that these increases will take effect 14 days from the date of the notice unless the offender files a timely motion with the court, appealing the increases in the time described in this division and requesting a hearing on the matter. Any such motion that is filed within that 14-day period must be considered to be filed in a timely manner, and any such motion that is filed after that 14-day period must be considered not to be filed in a timely manner. If the offender files a timely motion, the court may hold a hearing on the matter. The scope of the hearing is

limited to determining whether the offender in fact was prevented from starting a motor vehicle that is equipped with a certified ignition interlock device because the device was tampered with or circumvented or because the analysis of the deep-lung breath sample or other method employed by the ignition interlock device to measure the concentration by weight of alcohol in the offender's breath indicated the presence of alcohol in the offender's breath in a concentration sufficient to prevent the ignition interlock device from permitting the motor vehicle to be started.

If the court finds by a preponderance of the evidence that this instance as indicated by the ignition interlock device in fact did occur, it may deny the offender's appeal and issue the order increasing the relevant periods of time described in this division. If the court finds by a preponderance of the evidence that this instance as indicated by the ignition interlock device in fact did not occur, it must grant the offender's appeal and no such order shall be issued.

The act specifies that in no case may any period of suspension of an offender's driver's or commercial driver's license or permit or nonresident operating privilege that is increased by a factor of two or any period of time during which the offender is prohibited from exercising any limited driving privileges granted to the offender unless the vehicles the offender operates are equipped with a certified ignition interlock device that is increased by a factor of two exceed the maximum period of time for which the court originally was authorized to suspend the offender's driver's or commercial driver's license or permit or nonresident operating privilege under R.C. 4511.19(G)(1)(a), (b), (c), (d), or (e). It also specifies that nothing in R.C. 4510.46 shall be construed as prohibiting the court from revoking an individual's driving privileges. (R.C. 4510.46.)

Notice to offender of consequences of court receiving notice of "violation" of ignition interlock device

In any case in which the court issues an order under R.C. 4510.13 prohibiting an offender from exercising limited driving privileges unless the vehicles the offender operates are equipped with an immobilizing or disabling device, including a certified ignition interlock device, the court must notify the offender at the time the offender is granted limited driving privileges that, in accordance with R.C. 4510.46, if the court receives notice that the device prevented the offender from starting the motor vehicle because the device was tampered with or circumvented or because the analysis of the deep-lung breath sample or other method employed by the device to measure the concentration by weight of alcohol in the offender's breath indicated the presence of alcohol in the offender's breath in a concentration sufficient to prevent the device from permitting the motor vehicle to be started, the court may increase the period of suspension of the offender's driver's or commercial driver's license or permit or

nonresident operating privilege from that originally imposed by the court by a factor of two and may increase the period of time during which the offender will be prohibited from exercising any limited driving privileges granted to the offender unless the vehicles the offender operates are equipped with a certified ignition interlock device by a factor of two. (R.C. 4510.13(A)(10).)

State Registry of Ohio's Habitual OVI/OMWI Offenders, and Internet database containing State Registry

Establishment of State Registry and Internet database

The act requires the Department of Public Safety, not later than 90 days after the act's effective date, to do all of the following (R.C. 5502.10(A)):

(1) Establish and maintain a State Registry, named "Ohio's Habitual OVI/OMWI Offenders," that contains all of the information specified below regarding each offender who, on or after the effective date of the section is convicted in this state for a fifth or subsequent time in the preceding 20 years for an OVI/OMWI violation (see "***Definition of "OVI/OMWI violation"***," below). The State Registry is a public record open for inspection under the state's Public Records Law. The Department is required to obtain the information to be included in the State Registry from the court. A court that convicts a person for an OVI/OMWI violation must send the information described in (a) and (b), below, to the Department of Public Safety within 30 days after the conviction of the offender. The State Registry must include at least the following information regarding each offender who on or after the effective date of the section is convicted in this state for a fifth or subsequent time in the preceding 20 years for an OVI/OMWI violation:

(a) The offender's name, date of birth, and residence address, including, but not limited to, the street address, municipal corporation or township, county, and ZIP code of the person's place of residence;

(b) The number of times within the preceding 20 years that the offender has been convicted in Ohio for an OVI/OMWI violation and the date of each of those convictions.

(2) Establish and operate on the Internet a database that contains for each person who, on or after the effective date of the section is convicted in this state for the fifth or subsequent time in the preceding 20 years of an OVI/OMWI violation, all of the information regarding the offender that is included in the State Registry of Ohio's Habitual OVI/OMWI Offenders that is established and maintained under the provision described above in (1). The database is a public

record open for inspection under the state's Public Records Law, and it must be searchable by an offender's name, by county, and by ZIP code.

Updating of State Registry and Internet database

The act requires the Department of Public Safety to update the State Registry of Ohio's Habitual OVI/OMWI Offenders and the Internet database required under the provisions described above every month to ensure that the information they contain is accurate and current (R.C. 5502.10(C)).

Definition of "OVI/OMWI violation"

The act defines "OVI/OMWI violation," for purposes of the State Registry and Internet database provisions described above, as meaning any of the following (R.C. 5502.10(D)): (1) state OVI or state OVUAC or a violation of a municipal OVI ordinance, (2) having physical control of a vehicle while under the influence or a substantially equivalent municipal ordinance, (3) state OMWI or a violation of a municipal ordinance, law of another state, or law of the United States that is substantially equivalent to state OMWI, or (4) any equivalent offense not listed in clauses (1) to (3) of this paragraph (as used in this provision, "equivalent offense" has the same meaning as is described above in "***Definition of "equivalent offense" as used in OVI and OMWI laws***").

Burden of proof when proving prior constitutional defect

The act provides that if the defendant claims a constitutional defect in any prior conviction when it is necessary to prove such a conviction for sentencing and other purposes, the defendant has the burden of proving the defect by a preponderance of the evidence (R.C. 2945.75(B)(3)).

Financial sanction--reimbursement for alcohol monitoring device or ignition interlock

Continuing law provides that 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 R.C. 2929.18 or, in the circumstances specified in R.C. 2929.32, may impose upon the offender a fine in accordance with that section. Continuing law contains a list of financial sanctions that may be imposed under R.C. 2929.18. In addition to the nonexhaustive list of financial sanctions available in continuing law, the act provides that a financial sanction could include reimbursement by the offender for all or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under R.C. 4510.13. The act also makes this financial sanction

available for misdemeanor offenders. (R.C. 2929.18(A)(5)(a)(iii) and 2929.28(A)(3)(a)(iii).)

COMMENT

1. R.C. 4511.19(A)(1)(j) prohibits a person from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, except as provided in R.C. 4511.19(K), the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following: (a) the person has a concentration of amphetamine in the person's urine of at least 500 nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma, (b) the person has a concentration of cocaine in the person's urine of at least 150 nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma, (c) the person has a concentration of cocaine metabolite in the person's urine of at least 150 nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma, (d) the person has a concentration of heroin in the person's urine of at least 2,000 nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least 50 nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma, (e) the person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least 10 nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma, (f) the person has a concentration of L.S.D. in the person's urine of at least 25 nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least 10 nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma, (g) the person has a concentration of marihuana in the person's urine of at least 10 nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least 2 nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma, (h) either of the following applies: (i) the person is under the influence of alcohol, a drug of abuse,

or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 15 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 5 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma, or (ii) as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least 35 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma, (i) the person has a concentration of methamphetamine in the person's urine of at least 500 nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma, or (j) the person has a concentration of phencyclidine in the person's urine of at least 25 nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least 10 nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

2. R.C. 4511.19(B) prohibits a person under 21 years of age from operating any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply: (1) the person has a concentration of at least .02 of one per cent but less than .08 of one per cent by weight per unit volume of alcohol in the person's whole blood, (2) the person has a concentration of at least .03 of one per cent but less than .096 of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma, (3) the person has a concentration of at least .02 of one gram but less than .08 of one gram by weight of alcohol per 210 liters of the person's breath, or (4) the person has a concentration of at least .028 of one gram but less than .11 of one gram by weight of alcohol per 100 milliliters of the person's urine.

A violation of the prohibition is the offense of "operating a vehicle after underage alcohol consumption," commonly referred to as "state OVUAC." The penalty for the offense is as follows: (a) except as otherwise described in clause (b) of this next paragraph, the offense is a misdemeanor of the fourth degree and, in addition to any other sanction imposed for the offense, the court must impose a Class 6 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, (b) if, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more state OVI offenses, state OVUAC

offenses, or other equivalent offenses, the offense is a misdemeanor of the third degree and, in addition to any other sanction imposed for the offense, the court must impose a Class 4 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, or (c) if the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. 2941.1416 and if the court imposes a jail term for the offense, the court must impose upon the offender an additional definite jail term pursuant to R.C. 2929.24(E).

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. Judiciary - Criminal Justice	04-19-07
Recommitted to S. Judiciary - Criminal Justice	04-24-07
Re-reported, S. Judiciary - Criminal Justice	05-09-07
Passed Senate (32-0)	05-10-07
Reported, H. Criminal Justice	06-03-08
Passed House (87-6)	06-10-08
Senate concurred in House amendments (33-0)	06-10-08

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