

**§ 4511.19 Driving while under the influence of alcohol or drugs or with certain concentration of alcohol in bodily substances; chemical analysis. -- This version, HB 87, § 1 (150 v --), is in effect until 1-1-2004. See second version, HB 87, § 4 (150 v --), effective 1-1-2004.**

(A) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if any of the following apply:

(1) The person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse.

(2) The person has a concentration of eight-hundredths of one per cent or more but less than seventeen-hundredths of one per cent by weight of alcohol in the person's blood.

(3) The person has a concentration of eight-hundredths of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(4) The person has a concentration of eleven-hundredths of one gram or more but less than two hundred thirty-eight-thousandths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(5) The person has a concentration of seventeen-hundredths of one per cent or more by weight of alcohol in the person's blood.

(6) The person has a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath.

(7) The person has a concentration of two hundred thirty-eight-thousandths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.

(B) No person under twenty-one years of age shall operate any vehicle, streetcar, or trackless trolley within this state, if any of the following apply:

(1) The person has a concentration of at least two-hundredths of one per cent but less than eight-hundredths of one per cent by weight of alcohol in the person's blood.

(2) The person has a concentration of at least two-hundredths of one gram but less than eight-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(3) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than eleven-hundredths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(C) In any proceeding arising out of one incident, a person may be charged with a violation of division (A)(1) and a violation of division (B)(1), (2), or (3) of this section, but the person may not be convicted of more than one violation of these divisions.

(D)(1) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, the court may admit evidence on the concentration of alcohol, drugs of abuse, or alcohol and drugs of abuse in the defendant's blood, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance withdrawn within two hours of the time of the alleged violation.

When a person submits to a blood test at the request of a police officer under section [4511.191](#) [4511.19.1] of the Revised Code, only a physician, a registered nurse, or a qualified technician or chemist shall withdraw blood for the purpose of determining its alcohol, drug, or alcohol and drug content. This limitation does not apply to the taking of breath or urine specimens. A physician, a registered nurse, or a qualified technician or chemist may refuse to withdraw blood for the purpose of determining the alcohol, drug, or alcohol and drug content of the blood, if in the opinion of the physician, nurse, technician, or chemist the physical welfare of the person would be endangered by the withdrawing of blood.

Such bodily substance shall be analyzed in accordance with methods approved by the director of health by an individual possessing a valid permit issued by the director of health pursuant to section [3701.143](#) [3701.14.3] of the Revised Code.

(2) In a criminal prosecution or juvenile court proceeding for a violation of division (A) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance substantially equivalent to division (A) of this section relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, if there was at the time the bodily substance was withdrawn a concentration of less than eight-hundredths of one per cent by weight of alcohol in the defendant's blood, less than eight-hundredths of one gram by weight of alcohol per two hundred ten liters of the defendant's breath, or less than eleven-hundredths of one gram by weight of alcohol per one hundred milliliters of the defendant's urine, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of division (B) of this section or of a municipal ordinance substantially equivalent to division (B) of this section relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney or agent immediately upon the completion of the chemical test analysis.

The person tested may have a physician, a registered nurse, or a qualified technician or chemist of the person's own choosing administer a chemical test or tests in addition to any administered at the request of a police officer, and shall be so advised. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a police officer.

(4)(a) As used in divisions (D)(4)(b) and (c) of this section, "national highway traffic safety administration" means the national highway traffic safety administration established as an administration of the United States department of transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration, all of the following apply:

(i) The officer may testify concerning the results of the field sobriety test so administered.

(ii) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

(iii) If testimony is presented or evidence is introduced under division (D)(4)(b)(i) or (ii) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(c) Division (D)(4)(b) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (D)(4)(b) of this section.

(5) Any physician, registered nurse, or qualified technician or chemist who withdraws blood from a person pursuant to this section, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal liability, and from civil liability that is based upon a claim of assault and battery or based upon any other claim that is not in the nature of a claim of malpractice, for any act performed in withdrawing blood from the person.

**HISTORY:** GC § 6307-19; 119 v 766, § 19; Bureau of Code Revision, 10-1-53; 125 v 461; 130 v 1083 (Eff 7-11-63); 132 v H 380 (Eff 1-1-68); 133 v H 874 (Eff 9-16-70); 134 v S 14 (Eff 12-3-71); 135 v H 995 (Eff 1-1-75); 139 v S 432 (Eff 3-16-83); 141 v S 262 (Eff 3-20-87); 143 v S 131 (Eff 7-25-90); 143 v H 837 (Eff 7-25-90); 145 v S 82 (Eff 5-4-94); 148 v S 22 (Eff 5-17-2000); 149 v S 163, § 1 (Eff 4-9-2003); 150 v H 87. Eff 6-30-2003.

The effective date is set by section 26 of HB 87.

**[§ [4511.19.1](#)] § 4511.191 Implied consent.** -- RC § [4511.191](#) is affected by Am. Sub. S.B. 123 (149 v --), effective 1-1-2004. See the [2002 Legislative Bulletin No. 4 for the version effective 1-1-2004.](#)

(A) Any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking within this state shall be deemed to have given consent to a chemical test or tests of the person's blood, breath, or urine for the purpose of determining the alcohol, drug, or alcohol and drug content of the person's blood, breath, or urine if arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine. The chemical test or tests shall be administered at the request of a police officer having reasonable grounds to believe the person to have been operating a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking in this state while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or with a prohibited concentration of alcohol in the blood, breath, or urine. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.

(B) Any person who is dead or unconscious, or who is otherwise in a condition rendering the person incapable of refusal, shall be deemed not to have withdrawn consent as provided by division (A) of this section and the test or tests may be administered, subject to sections [313.12](#) to [313.16](#) of the Revised Code.

(C)(1) Any person under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine shall be advised at a police station, or at a hospital, first-aid station, or clinic to which the person has been taken for first-aid or medical treatment, of both of the following:

(a) The consequences, as specified in division (E) of this section, of the person's refusal to submit upon request to a chemical test designated by the law enforcement agency as provided in division (A) of this section;

(b) The consequences, as specified in division (F) of this section, of the person's submission to the designated chemical test if the person is found to have a prohibited concentration of alcohol in the blood, breath, or urine.

(2)(a) The advice given pursuant to division (C)(1) of this section shall be in a written form containing the information described in division (C)(2)(b) of this section and shall be read to the person. The form shall contain a statement that the form was shown to the person under arrest and read to the person in the presence of the arresting officer and either another police officer, a civilian police employee, or an employee of a hospital, first-aid station, or clinic, if any, to which the person has been taken for first-aid or medical treatment. The witnesses shall certify to this fact by signing the form.

(b) The form required by division (C)(2)(a) of this section shall read as follows:

"You now are under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or both alcohol and a drug of abuse and will be requested by a police officer to submit to a chemical test to determine the concentration of alcohol, drugs of abuse, or alcohol and drugs of abuse in your blood, breath, or urine.

If you refuse to submit to the requested test or if you submit to the requested test and are found to have a prohibited concentration of alcohol in your blood, breath, or urine, your driver's or commercial driver's license or permit or nonresident operating privilege immediately will be suspended for the period of time specified by law by the officer, on behalf of the registrar of motor vehicles. You may appeal this suspension at your initial appearance before the court that hears the charges against you resulting from the arrest, and your initial appearance will be conducted no later than five days after the arrest. This suspension is independent of the penalties for the offense, and you may be subject to other penalties upon conviction."

(D)(1) If a person under arrest as described in division (C)(1) of this section is not asked by a police officer to submit to a chemical test designated as provided in division (A) of this section, the arresting officer shall seize the Ohio or out-of-state driver's or commercial driver's license or permit of the person and immediately forward the seized license or permit to the court in which the arrested person is to appear on the charge for which the person was arrested. If the arrested person does not have the person's driver's or commercial driver's license or permit on the person's self or in the person's vehicle, the arresting officer shall order the arrested person to surrender it to the law enforcement agency that employs the officer within twenty-four hours after the arrest, and, upon the surrender, the officer's employing agency immediately shall forward the license or permit to the court in which the arrested person is to appear on the charge for which the person was arrested. Upon receipt of the license or permit, the court shall retain it pending the initial appearance of the arrested person and any action taken under section [4511.196](#) [4511.19.6] of the Revised Code.

If a person under arrest as described in division (C)(1) of this section is asked by a police officer to submit to a chemical test designated as provided in division (A) of this section and is advised of the consequences of the person's refusal or submission as provided in division (C) of this section and if the person either refuses to submit to the designated chemical test or the person submits to the designated chemical test and the test results indicate that the person's blood contained a concentration of eight-hundredths of one per cent or more by weight of alcohol, the person's breath contained a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath, or the person's urine contained a concentration of eleven-hundredths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine at the time of the alleged offense, the arresting officer shall do all of the following:

(a) On behalf of the registrar, serve a notice of suspension upon the person that advises the person that, independent of any penalties or sanctions imposed upon the person pursuant to any other section of the Revised Code or any other municipal ordinance, the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended, that the suspension takes effect immediately, that the suspension will last at least until the person's initial appearance on the charge that will be held within five days after the date of the person's arrest or the issuance of a citation to the person, and that the person may appeal the suspension at the initial appearance; seize the Ohio or out-of-state driver's or commercial driver's license or permit of the person; and immediately forward the seized license or permit to the registrar. If the arrested person does not have the person's driver's or commercial driver's license or permit on the person's self or in the person's vehicle, the arresting officer shall order the person to surrender it to the law enforcement agency that employs the officer within twenty-four hours after the service of the notice of suspension, and, upon the surrender, the officer's employing agency immediately shall forward the license or permit to the registrar.

(b) Verify the current residence of the person and, if it differs from that on the person's driver's or commercial driver's license or permit, notify the registrar of the change;

(c) In addition to forwarding the arrested person's driver's or commercial driver's license or permit to the registrar, send to the registrar, within forty-eight hours after the arrest of the person, a sworn report that includes all of the following statements:

(i) That the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was operating a vehicle upon a highway or public or private property used by the public for vehicular travel or parking within this state while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or with a prohibited concentration of alcohol in the blood, breath, or urine;

(ii) That the person was arrested and charged with operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or with operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;

(iii) That the officer asked the person to take the designated chemical test, advised the person of the consequences of submitting to the chemical test or refusing to take the chemical test, and gave the person the form described in division (C)(2) of this section;

(iv) That the person refused to submit to the chemical test or that the person submitted to the chemical test and the test results indicate that the person's blood contained a concentration of eight-hundredths of one per cent or more by weight of alcohol, the person's breath contained a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath, or the person's urine contained a concentration of eleven-hundredths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine at the time of the alleged offense;

(v) That the officer served a notice of suspension upon the person as described in division (D)(1)(a) of this section.

(2) The sworn report of an arresting officer completed under division (D)(1)(c) of this section shall be given by the officer to the arrested person at the time of the arrest or sent to the person by regular first class mail by the registrar as soon thereafter as possible, but no later than fourteen days after receipt of the report. An arresting officer may give an unsworn report to the arrested person at the time of the arrest provided the report is complete when given to the arrested person and subsequently is sworn to by the arresting officer. As soon as possible, but no later than forty-eight hours after the arrest of the person, the arresting officer shall send a copy of the sworn report to the court in which the arrested person is to appear on the charge for which the person was arrested.

(3) The sworn report of an arresting officer completed and sent to the registrar and the court under divisions (D)(1)(c) and (D)(2) of this section is prima-facie proof of the information and statements that it contains and shall be admitted and considered as prima-facie proof of the information and statements that it contains in any appeal under division (H) of this section relative to any suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege that results from the arrest covered by the report.

(E)(1) Upon receipt of the sworn report of an arresting officer completed and sent to the registrar and a court pursuant to divisions (D)(1)(c) and (D)(2) of this section in regard to a person who refused to take the designated chemical test, the registrar shall enter into the registrar's records the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer under division (D)(1)(a) of this section and the period of the suspension, as determined under divisions (E)(1)(a) to (d) of this section. The suspension shall be subject to appeal as provided in this section and shall be for whichever of the following periods applies:

(a) If the arrested person, within five years of the date on which the person refused the request to consent to the chemical test, had not refused a previous request to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content, the period of suspension shall be one year. If the person is a resident without a license or permit to operate a vehicle within this state, the registrar shall deny to the person the issuance of a driver's or commercial driver's license or permit for a period of one year after the date of the alleged violation.

(b) If the arrested person, within five years of the date on which the person refused the request to consent to the chemical test, had refused one previous request to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content, the period of suspension or denial shall be two years.

(c) If the arrested person, within five years of the date on which the person refused the request to consent to the chemical test, had refused two previous requests to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content, the period of suspension or denial shall be three years.

(d) If the arrested person, within five years of the date on which the person refused the request to consent to the chemical test, had refused three or more previous requests to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content, the period of suspension or denial shall be five years.

(2) The suspension or denial imposed under division (E)(1) of this section shall continue for the entire one-year, two-year, three-year, or five-year period, subject to appeal as provided in this section and subject to termination as provided in division (K) of this section.

(F) Upon receipt of the sworn report of an arresting officer completed and sent to the registrar and a court pursuant to divisions (D)(1)(c) and (D)(2) of this section in regard to a person whose test results indicate that the person's blood contained a concentration of eight-hundredths of one per cent or more by weight of alcohol, the person's breath contained a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath, or the person's urine contained a concentration of eleven-hundredths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine at the time of the alleged offense, the registrar shall enter into the registrar's records the fact that the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended by the arresting officer under division (D)(1)(a) of this section and the period of the suspension, as determined under divisions (F)(1) to (4) of this section. The suspension shall be subject to appeal as provided in this section and shall be for whichever of the following periods that applies:

(1) Except when division (F)(2), (3), or (4) of this section applies and specifies a different period of suspension or denial, the period of the suspension or denial shall be ninety days.

(2) The period of suspension or denial shall be one year if the person has been convicted, within six years of the date the test was conducted, of a violation of one of the following:

(a) Division (A) or (B) of section [4511.19](#) of the Revised Code;

(b) A municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(c) A municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;

(d) Section [2903.04](#) of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section;

(e) Division (A)(1) of section [2903.06](#) or division (A)(1) of section [2903.08](#) of the Revised Code or a municipal ordinance that is substantially similar to either of those divisions;

(f) Division (A)(2), (3), or (4) of section [2903.06](#), division (A)(2) of section [2903.08](#), or former section [2903.07](#) of the Revised Code, or a municipal ordinance that is substantially similar to any of those divisions or that former section, in a case in which the jury or judge found that at the time of the commission of the offense the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(g) A statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to division (A) or (B) of section [4511.19](#) of the Revised Code.

(3) If the person has been convicted, within six years of the date the test was conducted, of two violations of a statute or ordinance described in division (F)(2) of this section, the period of the suspension or denial shall be two years.

(4) If the person has been convicted, within six years of the date the test was conducted, of more than two violations of a statute or ordinance described in division (F)(2) of this section, the period of the suspension or denial shall be three years.

(G)(1) A suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege under division (D)(1)(a) of this section for the period of time described in division (E) or (F) of this section is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take, or in the person taking, the chemical test or tests under division (A) of this section affects the suspension only as described in division (H)(2) of this section.

(2) If a person is arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine and regardless of whether the person's driver's or commercial driver's license or permit or nonresident operating privilege is or is not suspended under division (E) or (F) of this section, the person's initial appearance on the charge resulting from the arrest shall be held within five days of the person's arrest or the issuance of the citation to the person, subject to any continuance granted by the court pursuant to division (H)(1) of this section regarding the issues specified in that division.

(H)(1) If a person is arrested for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine and if the person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended under division (E) or (F) of this section, the person may appeal the suspension at the person's initial appearance on the charge resulting from the arrest in the court in which the person will appear on that charge. If the person appeals the suspension at the person's initial appearance, the appeal does not stay the operation of the suspension. Subject to division (H)(2) of this section, no court has jurisdiction to grant a stay of a suspension imposed under division (E) or (F) of this section, and any order issued by any court that purports to grant a stay of any suspension imposed under either of those divisions shall not be given administrative effect.

If the person appeals the suspension at the person's initial appearance, either the person or the registrar may request a continuance of the appeal. Either the person or the registrar shall make the request for a continuance of the appeal at the same time as the making of the appeal. If either the person or the registrar requests a continuance of the appeal, the court may grant the continuance. The court also may continue the appeal on its own motion. The granting of a continuance applies only to the conduct of the appeal of the suspension and does not extend the time within which the initial appearance must be conducted, and the court shall proceed with all other aspects of the initial appearance in accordance with its normal procedures. Neither the request for nor the granting of a continuance stays the operation of the suspension that is the subject of the appeal.

If the person appeals the suspension at the person's initial appearance, the scope of the appeal is limited to determining whether one or more of the following conditions have not been met:

(a) Whether the law enforcement officer had reasonable ground to believe the arrested person was operating a vehicle upon a highway or public or private property used by the public for vehicular travel or parking within this state while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or with a prohibited concentration of alcohol in the blood, breath, or urine and whether the arrested person was in fact placed under arrest;

(b) Whether the law enforcement officer requested the arrested person to submit to the chemical test designated pursuant to division (A) of this section;

(c) Whether the arresting officer informed the arrested person of the consequences of refusing to be tested or of submitting to the test;

(d) Whichever of the following is applicable:

(i) Whether the arrested person refused to submit to the chemical test requested by the officer;

(ii) Whether the chemical test results indicate that the arrested person's blood contained a concentration of eight-hundredths of one per cent or more by weight of alcohol, the person's breath contained a concentration of eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath, or the person's urine contained a concentration of eleven-hundredths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine at the time of the alleged offense.

(2) If the person appeals the suspension at the initial appearance, the judge or referee of the court or the mayor of the mayor's court shall determine whether one or more of the conditions specified in divisions (H)(1)(a) to (d) of this section have not been met. The person who appeals the suspension has the burden of proving, by a preponderance of the evidence, that one or more of the specified conditions has not been met. If during the appeal at the initial appearance the judge or referee of the court or the mayor of the mayor's court determines that all of those conditions have been met, the judge, referee, or mayor shall uphold the suspension, shall continue the suspension, and shall notify the registrar of the decision on a form approved by the registrar. Except as otherwise provided in division (H)(2) of this section, if the suspension is upheld or if the person does not appeal the suspension at the person's initial appearance under division (H)(1) of this section, the suspension shall continue until the complaint alleging the violation for which the person was arrested and in relation to which the suspension was imposed is adjudicated on the merits by the judge or referee of the trial court or by the mayor of the mayor's court. If the suspension was imposed under division (E) of this section and it is continued under this division, any subsequent finding that the person is not guilty of the charge that resulted in the person being requested to take the chemical test or tests under division (A) of this section does not terminate or otherwise affect the suspension. If the suspension was imposed under division (F) of this section and it is continued under this division, the suspension shall terminate if, for any reason, the person subsequently is found not guilty of the charge that resulted in the person taking the chemical test or tests under division (A) of this section.

If, during the appeal at the initial appearance, the judge or referee of the trial court or the mayor of the mayor's court determines that one or more of the conditions specified in divisions (H)(1)(a) to (d) of this section have not been met, the judge, referee, or mayor shall terminate the suspension, subject to the imposition of a new suspension under division (B) of section [4511.196](#) [4511.19.6] of the Revised Code; shall notify the registrar of the decision on a form approved by the registrar; and, except as provided in division (B) of section [4511.196](#) [4511.19.6] of the Revised Code, shall order the registrar to return the driver's or commercial driver's license or permit to the person or to take such measures as may be necessary, if the license or permit was destroyed under section [4507.55](#) of the Revised Code, to permit the person to obtain a replacement driver's or commercial driver's license or permit from the registrar or a deputy registrar in accordance with that section. The court also shall issue to the person a court order, valid for not more than ten days from the date of issuance, granting the person operating privileges for that period of time.

If the person appeals the suspension at the initial appearance, the registrar shall be represented by the prosecuting attorney of the county in which the arrest occurred if the initial appearance is conducted in a juvenile court or county court, except that if the arrest occurred within a city or village within the jurisdiction of the county court in which the appeal is conducted, the city director of law or village solicitor of that city or village shall represent the registrar. If the appeal is conducted in a municipal court, the registrar shall be represented as provided in section [1901.34](#) of the Revised Code. If the appeal is conducted in a mayor's court, the registrar shall be represented by the city director of law, village solicitor, or other chief legal officer of the municipal corporation that operates that mayor's court.

(I)(1)(a) A person is not entitled to request, and a court shall not grant to the person, occupational driving privileges under division (I)(1) of this section if a person's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended pursuant to division (E) of this section, and the person, within the preceding seven years, has refused three previous requests to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content or has been convicted of or pleaded guilty to three or more violations of one or more of the following:

(i) Division (A) or (B) of section [4511.19](#) of the Revised Code;

(ii) A municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(iii) A municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;

(iv) Section [2903.04](#) of the Revised Code in a case in which the person was subject to the sanctions described in division (D) of that section;

(v) Division (A)(1) of section [2903.06](#) or division (A)(1) of section [2903.08](#) of the Revised Code or a municipal ordinance that is substantially similar to either of those divisions;

(vi) Division (A)(2), (3), or (4) of section [2903.06](#), division (A)(2) of section [2903.08](#), or former section [2903.07](#) of the Revised Code, or a municipal ordinance that is substantially similar to any of those divisions or that former section, in a case in which the jury or judge found that the person was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(vii) A statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to division (A) or (B) of section [4511.19](#) of the Revised Code.

(b) Any other person who is not described in division (I)(1)(a) of this section and whose driver's or commercial driver's license or nonresident operating privilege has been suspended pursuant to division (E) of this section may file a petition requesting occupational driving privileges in the common pleas court, municipal court, county court, mayor's court, or, if the person is a minor, juvenile court with jurisdiction over the related criminal or delinquency case. The petition may be filed at any time subsequent to the date on which the notice of suspension is served upon the arrested person. The person shall pay the costs of the proceeding, notify the registrar of the filing of the petition, and send the registrar a copy of the petition.

In the proceedings, the registrar shall be represented by the prosecuting attorney of the county in which the arrest occurred if the petition is filed in the juvenile court, county court, or common pleas court, except that, if the arrest occurred within a city or village within the jurisdiction of the county court in which the petition is filed, the city director of law or village solicitor of that city or village shall represent the registrar. If the petition is filed in the municipal court, the registrar shall be represented as provided in section [1901.34](#) of the Revised Code. If the petition is filed in a mayor's court, the registrar shall be represented by the city director of law, village solicitor, or other chief legal officer of the municipal corporation that operates the mayor's court.

The court, if it finds reasonable cause to believe that suspension would seriously affect the person's ability to continue in the person's employment, may grant the person occupational driving privileges during the period of suspension imposed pursuant to division (E) of this section, subject to the limitations contained in this division and division (I)(2) of this section. The court may grant the occupational driving privileges, subject to the limitations contained in this division and division (I)(2) of this section, regardless of whether the person appeals the suspension at the person's initial appearance under division (H)(1) of this section or appeals the decision of the court made pursuant to the appeal conducted at the initial appearance, and, if the person has appealed the suspension or decision, regardless of whether the matter at issue has been heard or decided by the court. The court shall not grant occupational driving privileges for employment as a driver of commercial motor vehicles to any person who is disqualified from operating a commercial motor vehicle under section [3123.611](#) [3123.61.1] or 4506.16 of the Revised Code or whose commercial driver's license or commercial driver's temporary instruction permit has been suspended under section [3123.58](#) of the Revised Code.

(2)(a) In granting occupational driving privileges under division (I)(1) of this section, the court may impose any condition it considers reasonable and necessary to limit the use of a vehicle by the person. The court shall deliver to the person a permit card, in a form to be prescribed by the court, setting forth the time, place, and other conditions limiting the defendant's use of a vehicle. The grant of occupational driving privileges shall be conditioned upon the person's having the permit in the person's possession at all times during which the person is operating a vehicle.

A person granted occupational driving privileges who operates a vehicle for other than occupational purposes, in violation of any condition imposed by the court, or without having the permit in the person's possession, is guilty of a violation of section [4507.02](#) of the Revised Code.

(b) The court may not grant a person occupational driving privileges under division (I)(1) of this section when prohibited by a limitation contained in that division or during any of the following periods of time:

(i) The first thirty days of suspension imposed upon a person who, within five years of the date on which the person refused the request to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content and for which refusal the suspension was imposed, had not refused a previous request to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content;

(ii) The first ninety days of suspension imposed upon a person who, within five years of the date on which the person refused the request to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content and for which refusal the suspension was imposed, had refused one previous request to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content;

(iii) The first year of suspension imposed upon a person who, within five years of the date on which the person refused the request to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content and for which refusal the suspension was imposed, had refused two previous requests to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content;

(iv) The first three years of suspension imposed upon a person who, within five years of the date on which the person refused the request to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content and for which refusal the suspension was imposed, had refused three or more previous requests to consent to a chemical test of the person's blood, breath, or urine to determine its alcohol content.

(3) The court shall give information in writing of any action taken under this section to the registrar.

(4) If a person's driver's or commercial driver's license or permit or nonresident operating privilege has been suspended pursuant to division (F) of this section, and the person, within the preceding seven years, has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section [4511.19](#) of the Revised Code, a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine, section [2903.04](#) of the Revised Code in a case in which the person was subject to the sanctions described in division (D) of that section, or section [2903.06](#) or [2903.08](#) or former section [2903.07](#) of the Revised Code or a municipal ordinance that is substantially similar to former section [2903.07](#) of the Revised Code in a case in which the jury or judge found that the person was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or a statute of the United States or of any other state or a municipal ordinance of a municipal corporation located in any other state that is substantially similar to division (A) or (B) of section [4511.19](#) of the Revised Code, the person is not entitled to request, and the court shall not grant to the person, occupational driving privileges under this division. Any other person whose driver's or commercial driver's license or nonresident operating privilege has been suspended pursuant to division (F) of this section may file in the court specified in division (I)(1)(b) of this section a petition requesting occupational driving privileges in accordance with section [4507.16](#) of the Revised Code. The petition may be filed at any time subsequent to the date on which the arresting officer serves the notice of suspension upon the arrested person. Upon the making of the request, occupational driving privileges may be granted in accordance with section [4507.16](#) of the Revised Code. The court may grant the occupational driving privileges, subject to the limitations contained in section [4507.16](#) of the Revised Code, regardless of whether the person appeals the suspension at the person's initial appearance under division (H)(1) of this section or appeals the decision of the court made pursuant to the appeal conducted at the initial appearance, and, if the person has appealed the suspension or decision, regardless of whether the matter at issue has been heard or decided by the court.

(J) When it finally has been determined under the procedures of this section that a nonresident's privilege to operate a vehicle within this state has been suspended, the registrar shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(K) A suspension of the driver's or commercial driver's license or permit of a resident, a suspension of the operating privilege of a nonresident, or a denial of a driver's or commercial driver's license or permit pursuant to division (E) or (F) of this section shall be terminated by the registrar upon receipt of notice of the person's entering a plea of guilty to, or of the person's conviction of, operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or with a prohibited concentration of alcohol in the blood, breath, or urine, if the offense for which the plea is entered or that resulted in the conviction arose from the same incident that led to the suspension or denial.

The registrar shall credit against any judicial suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege imposed pursuant to division (B) or (E) of section [4507.16](#) of the Revised Code any time during which the person serves a related suspension imposed pursuant to division (E) or (F) of this section.

(L) At the end of a suspension period under this section, section [4511.196](#) [4511.19.6], or division (B) of section [4507.16](#) of the Revised Code and upon the request of the person whose driver's or commercial driver's license or permit was suspended and who is not otherwise subject to suspension, revocation, or disqualification, the registrar shall return the driver's or commercial driver's license or permit to the person upon the person's compliance with all of the conditions specified in divisions (L)(1) and (2) of this section:

(1) A showing by the person that the person has proof of financial responsibility, a policy of liability insurance in effect that meets the minimum standards set forth in section [4509.51](#) of the Revised Code, or proof, to the satisfaction of the registrar, that the person is able to respond in damages in an amount at least equal to the minimum amounts specified in section [4509.51](#) of the Revised Code.

(2) Subject to the limitation contained in division (L)(3) of this section, payment by the person of a license reinstatement fee of four hundred twenty-five\* dollars to the bureau of motor vehicles, which fee shall be deposited in the state treasury and credited as follows:

(a) One hundred twelve dollars and fifty cents shall be credited to the statewide treatment and prevention fund created by section [4301.30](#) of the Revised Code. The fund shall be used to pay the costs of driver treatment and intervention programs operated pursuant to sections [3793.02](#) and [3793.10](#) of the Revised Code. The director of alcohol and drug addiction services shall determine the share of the fund that is to be allocated to alcohol and drug addiction programs authorized by section [3793.02](#) of the Revised Code, and the share of the fund that is to be allocated to drivers' intervention programs authorized by section [3793.10](#) of the Revised Code.

(b) Seventy-five dollars shall be credited to the reparations fund created by section [2743.191](#) [2743.19.1] of the Revised Code.

(c) Thirty-seven dollars and fifty cents shall be credited to the indigent drivers alcohol treatment fund, which is hereby established. Except as otherwise provided in division (L)(2)(c) of this section, moneys in the fund shall be distributed by the department of alcohol and drug addiction services to the county indigent drivers alcohol treatment funds, the county juvenile indigent drivers alcohol treatment funds, and the municipal indigent drivers alcohol treatment funds that are required to be established by counties and municipal corporations pursuant to division (N) of this section, and shall be used only to pay the cost of an alcohol and drug addiction treatment program attended by an offender or juvenile traffic offender who is ordered to attend an alcohol and drug addiction treatment program by a 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 attendance at the program or to pay the costs specified in division (N)(4) of this section in accordance with that division. Moneys in the fund that are not distributed to a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund under division (N) of this section because the director of alcohol and drug addiction services does not have the information necessary to identify the county or municipal corporation where the offender or juvenile offender was arrested may be transferred by the director of budget and management to the statewide treatment and prevention fund created by section [4301.30](#) of the Revised Code, upon certification of the amount by the director of alcohol and drug addiction services.

(d) Seventy-five dollars shall be credited to the Ohio rehabilitation services commission established by section [3304.12](#) of the Revised Code, to the services for rehabilitation fund, which is hereby established. The fund shall be used to match available federal matching funds where appropriate, and for any other purpose or program of the commission to rehabilitate people with disabilities to help them become employed and independent.

(e) Seventy-five dollars shall be deposited into the state treasury and credited to the drug abuse resistance education programs fund, which is hereby established, to be used by the attorney general for the purposes specified in division (L)(4) of this section.

(f) Thirty dollars shall be credited to the state bureau of motor vehicles fund created by section [4501.25](#) of the Revised Code.

(g) Twenty dollars shall be credited to the trauma and emergency medical services grants fund created by section [4513.263](#) [4513.26.3] of the Revised Code.

(3) If a person's driver's or commercial driver's license or permit is suspended under division (E) or (F) of this section, section [4511.196](#) [4511.19.6], or division (B) of section [4507.16](#) of the Revised Code, or any combination of the suspensions described in division (L)(3) of this section, and if the suspensions arise from a single incident or a single set of facts and circumstances, the person is liable for payment of, and shall be required to pay to the bureau, only one reinstatement fee of four hundred five dollars.\* The reinstatement fee shall be distributed by the bureau in accordance with division (L)(2) of this section.

(4) The attorney general shall use amounts in the drug abuse resistance education programs fund to award grants to law enforcement agencies to establish and implement drug abuse resistance education programs in public schools. Grants awarded to a law enforcement agency under division (L)(4) of this section shall be used by the agency to pay for not more than fifty per cent of the amount of the salaries of law enforcement officers who conduct drug abuse resistance education programs in public schools. The attorney general shall not use more than six per cent of the amounts the attorney general's office receives under division (L)(2)(e) of this section to pay the costs it incurs in administering the grant program established by division (L)(4) of this section and in providing training and materials relating to drug abuse resistance education programs.

The attorney general shall report to the governor and the general assembly each fiscal year on the progress made in establishing and implementing drug abuse resistance education programs. These reports shall include an evaluation of the effectiveness of these programs.

(M) Suspension of a commercial driver's license under division (E) or (F) of this section shall be concurrent with any period of disqualification under section [3123.611](#) [3123.61.1] or 4506.16 of the Revised Code or any period of suspension under section [3123.58](#) of the Revised Code. No person who is disqualified for life from holding a commercial driver's license under section [4506.16](#) of the Revised Code shall be issued a driver's license under Chapter [4507](#). of the Revised Code during the period for which the commercial driver's license was suspended under division (E) or (F) of this section, and no person whose commercial driver's license is suspended under division (E) or (F) of this section shall be issued a driver's license under that chapter during the period of the suspension.

(N)(1) Each county shall establish an indigent drivers alcohol treatment fund, each county shall establish a juvenile indigent drivers alcohol treatment fund, and each municipal corporation in which there is a municipal court shall establish an indigent drivers alcohol treatment fund. All revenue that the general assembly appropriates to the indigent drivers alcohol treatment fund for transfer to a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund, all portions of fees that are paid under division (L) of this section and that are credited under that division to the indigent drivers alcohol treatment fund in the state treasury for a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund, and all portions of fines that are specified for deposit into a county or municipal indigent drivers alcohol treatment fund by section [4511.193](#) [4511.19.3] of the Revised Code shall be deposited into that county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, or municipal indigent drivers alcohol treatment fund in accordance with division (N)(2) of this section. Additionally, all portions of fines that are paid for a violation of section [4511.19](#) of the Revised Code or division (B)(2) of section [4507.02](#) of the Revised Code, and that are required under division (A)(1), (2), (5), or (6) of section [4511.99](#) or division (B)(5) of section [4507.99](#) of the Revised Code to be deposited into a county indigent drivers alcohol treatment fund or municipal indigent drivers alcohol treatment fund shall be deposited into the appropriate fund in accordance with the applicable division.

(2) That portion of the license reinstatement fee that is paid under division (L) of this section and that is credited under that division to the indigent drivers alcohol treatment fund shall be deposited into a county indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund as follows:

(a) If the suspension in question was imposed under this section, that portion of the fee shall be deposited as follows:

(i) If the fee is paid by a person who was charged in a county court with the violation that resulted in the suspension, the portion shall be deposited into the county indigent drivers alcohol treatment fund under the control of that court;

(ii) If the fee is paid by a person who was charged in a juvenile court with the violation that resulted in the suspension, the portion shall be deposited into the county juvenile indigent drivers alcohol treatment fund established in the county served by the court;

(iii) If the fee is paid by a person who was charged in a municipal court with the violation that resulted in the suspension, the portion shall be deposited into the municipal indigent drivers alcohol treatment fund under the control of that court.

(b) If the suspension in question was imposed under division (B) of section [4507.16](#) of the Revised Code, that portion of the fee shall be deposited as follows:

(i) If the fee is paid by a person whose license or permit was suspended by a county court, the portion shall be deposited into the county indigent drivers alcohol treatment fund under the control of that court;

(ii) If the fee is paid by a person whose license or permit was suspended by a municipal court, the portion shall be deposited into the municipal indigent drivers alcohol treatment fund under the control of that court.

(3) 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 shall be made only upon the order of a county, juvenile, or municipal court judge and only for payment of the cost of the attendance at an alcohol and drug addiction treatment program of a person who is convicted of, or found to be a juvenile traffic offender by reason of, a violation of division (A) of section [4511.19](#) of the Revised Code or a substantially similar municipal ordinance, who is ordered by the court to attend the alcohol and drug addiction treatment program, and who is determined by the court to be unable to pay the cost of attendance at the treatment program or for payment of the costs specified in division (N)(4) of this section in accordance with that division. The alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services established pursuant to section [340.02](#) or [340.021](#) [340.02.1] of the Revised Code and serving the alcohol, drug addiction, and mental health service district in which the court is located shall administer the indigent drivers alcohol treatment program of the court. When a court orders an offender or juvenile traffic offender to attend an alcohol and drug addiction treatment program, the board shall determine which program is suitable to meet the needs of the offender or juvenile traffic offender, and when a suitable program is located and space is available at the program, the offender or juvenile traffic offender shall attend the program designated by the board. A reasonable amount not to exceed five per cent of the amounts credited to and deposited into the county indigent drivers alcohol treatment fund, the county juvenile indigent drivers alcohol treatment fund, or the municipal indigent drivers alcohol treatment fund serving every court whose program is administered by that board shall be paid to the board to cover the costs it incurs in administering those indigent drivers alcohol treatment programs.

(4) If a county, juvenile, or municipal court determines, in consultation with the alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services established pursuant to section [340.02](#) or [340.021](#) [340.02.1] of the Revised Code and serving the alcohol, drug addiction, and mental health district in which the court is located, that the funds in the county indigent drivers alcohol treatment fund, the county juvenile indigent drivers alcohol treatment fund, or the municipal indigent drivers alcohol treatment fund under the control of the court are more than sufficient to satisfy the purpose for which the fund was established, as specified in divisions (N)(1) to (3) of this section, the court may declare a surplus in the fund. If the court declares a surplus in the fund, the court may expend the amount of the surplus in the fund for alcohol and drug abuse assessment and treatment of persons who are charged in the court with committing a criminal offense or with being a delinquent child or juvenile traffic offender and in relation to whom both of the following apply:

(a) The court determines that substance abuse was a contributing factor leading to the criminal or delinquent activity or the juvenile traffic offense with which the person is charged.

(b) The court determines that the person is unable to pay the cost of the alcohol and drug abuse assessment and treatment for which the surplus money will be used.

**HISTORY:** 132 v H 380 (Eff 1-1-68); 132 v S 512 (Eff 3-10-68); 133 v H 1 (Eff 3-18-69); 134 v H 792 (Eff 2-3-72); 136 v H 1 (Eff 6-13-75); 136 v H 451 (Eff 1-3-77); 137 v H 219 (Eff 11-1-77); 137 v H 469 (Eff 10-25-78); 139 v S 432 (Eff 3-16-83); 141 v H 201 (Eff 7-1-85); 141 v S 262 (Eff 3-20-87); 142 v H 303 (Eff 10-20-87); 142 v S 308 (Eff 3-14-89); 142 v H 643 (Eff 3-17-89); 143 v H 329 (Eff 6-30-89); 143 v H 381 (Eff 7-1-89); 143 v H 317 (Eff 10-10-89); 143 v S 131 (Eff 7-25-90); 143 v H 837 (Eff 7-25-90); 144 v S 275 (Eff 9-1-93); 145 v H 152 (Eff 7-1-93); 145 v S 62, §§ 1, 4 (Eff 9-1-93); 145 v S 82 (Eff 5-4-94); 145 v H 236 (Eff 9-29-94); 145 v H 687 (Eff 10-12-94); 146 v H 117 (Eff 6-30-95); 146 v S 2 (Eff 7-1-96); 146 v H 353, § 1 (Eff 9-17-96); 146 v S 166, § 1 (Eff 10-17-96); 146 v H 167 (Eff 5-15-97); 146 v H 353, § 4 (Eff 5-15-97); 146 v S 166, § 6 (Eff 5-15-97); 147 v S 85 (Eff 5-15-97); 147 v H 210 (Eff 6-30-97); 147 v S 60 (Eff 10-21-97); 147 v S 80 (Eff 9-16-98); 148 v H 283 (Eff 6-30-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 138 (Eff 11-3-2000); 148 v S 180 (Eff 3-22-2001); 150 v H 87. Eff 6-30-2003.

\* So in enrolled bill, division (L)(2) and (L)(3).

The effective date is set by section 26 of HB 87.

### **Comparative Legislation**

Implied consent:

CA--Veh Code §§ 13353, 13354  
FL--Stat Ann § 316.1932  
IL--Comp Stat Ann ch 625 § 5/11-501.1  
IN--Code §§ 9-30-6-1 et seq, 9-30-7-1 et seq  
KY--Rev Stat Ann §§ 189.520, 189A.103  
MI--Comp Laws Ann § 257.625c  
NY--Vehicle & T §§ 1192, 1194  
PA--CSA tit 75 § 3731