



Ohio Legislative Service Commission

Bill Analysis

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S.B. 138

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(As Introduced)

Sens. Hughes and Cafaro, Patton, LaRose

BILL SUMMARY

- Requires a person charged with driving the wrong way on a divided interstate highway to appear in court to answer the charge under specified circumstances.
- Enhances the penalty for wrong-way driving on a divided interstate highway if either of the following apply:
 - The offender drove the wrong way as a proximate result of committing an OVI offense.
 - The offender was driving a commercial motor vehicle, was involved in a collision, and the collision caused physical harm to, or the death of, another.
- Requires a driver's license suspension for driving the wrong way on a divided interstate highway if either:
 - The offender recklessly operated the vehicle for 500 feet or more; or
 - The offender recklessly operated the vehicle and was involved in a collision that resulted in physical harm to, or the death of, another person.
- Prohibits a person whose license has been suspended for wrong-way driving from operating a motor vehicle during the period of the suspension and requires a definite jail or prison term and authorizes a fine for violating the prohibition.
- Requires disqualification from the operation of a commercial motor vehicle for driving a *commercial* motor vehicle the wrong way on a divided interstate highway

for more than 500 feet or if that driving caused physical harm to, or the death of, another person.

CONTENT AND OPERATION

Wrong-way driving on a divided interstate highway

The bill modifies provisions of current law related to wrong-way driving on a divided highway by prescribing enhanced penalties that apply if a vehicle is operated on a divided "interstate highway" under certain circumstances. The bill also establishes a new offense of driving under a license suspension imposed for wrong-way driving. For purposes of the bill, an interstate highway is any highway that is part of the Dwight D. Eisenhower National System of Interstate and Defense Highways¹ and that has been divided into two roadways by an intervening space, by a physical barrier, or by a clearly indicated dividing section.

Current law requires vehicles to be driven only on the right-hand roadway of a divided highway and prohibits any vehicle from being driven over, across, or within the dividing space, barrier, or section except through an opening, crossover, or intersection established by a public authority, for purposes of an emergency stop, or in compliance with a police officer's order.² Additional or different charges may potentially apply to a person who drives the wrong way on a highway and those provisions are unmodified by the bill (see "**Background**," below).

Court appearance

Under the bill, a person cannot sign a ticket, citation, or summons to plead guilty to a charge of driving the wrong way on a divided highway and must appear in court to answer the charge if the ticket, citation, or summons indicates that the person operated a motor vehicle upon the left-hand roadway of a divided interstate highway and the person drove under one of the following conditions:

(1) For a distance of 500 feet or more;

(2) For any distance, while committing a state OVI offense (driving under the influence of alcohol or drugs)³ or a substantially equivalent municipal OVI offense; or

¹ R.C. 4511.35(E), by reference to 23 U.S.C. 101, not in the bill.

² R.C. 4511.35(A).

³ R.C. 4511.19(A), not in the bill.



(3) For any distance, if the person was involved in a motor vehicle collision on that left-hand roadway that caused either "physical harm to another person" (see "**Definitions**," below) or the death of another person.⁴

Generally, under current law, a person who is charged with a moving traffic violation may dispose of the violation through the appropriate court's Traffic Violations Bureau by signing the guilty plea to the violation and waiver of trial that is on the traffic ticket and paying the fine and costs specified for the violation. In that case, the offender does not need to appear in court. However, this option is not available for any of a list of specified, serious violations.⁵

Enhanced penalties

The bill also establishes enhanced penalties for driving the wrong way on a divided interstate highway that are applicable in the following circumstances:

(1) The offender operated a motor vehicle upon the left-hand roadway of a divided interstate highway as a proximate result of committing a state or municipal OVI offense; or

(2) The offender operated a commercial motor vehicle on the left-hand roadway of a divided interstate highway and the commercial motor vehicle was involved in a motor vehicle collision that caused "physical harm to another person" (see "**Definitions**," below) or caused the death of another person.

In either of those two circumstances, a wrong-way driving violation is a fourth degree felony.⁶ Generally, under current law, driving the wrong way on a divided highway is a minor misdemeanor. However, it is a fourth degree misdemeanor if the offender within the preceding year previously has been convicted of any of a list of specified "predicate traffic offenses" and it is a third degree misdemeanor if the offender within the preceding year previously has been convicted of two or more of those offenses.⁷

⁴ R.C. 4511.35(B).

⁵ Traf. Rule 13. The ability to sign a traffic ticket depends on circumstances set forth in the Traffic Rules promulgated by the Ohio Supreme Court.

⁶ R.C. 4511.35(D)(1) and (E)(1)(a).

⁷ R.C. 4511.35(C).



Strict liability

The bill specifies that wrong-way driving on a divided highway, or driving within the dividing space, barrier, or section of a divided highway, is a strict liability offense.⁸

License suspension and prohibition against violating the suspension

The bill requires the sentencing court to impose a mandatory driver's license suspension for operating a motor vehicle upon the left-hand roadway of a divided interstate highway as follows:

(1) For a definite period not to exceed one year (Class 7 suspension) if the trier of fact finds that the person recklessly operated a motor vehicle in that situation for a distance of 500 feet or more; and

(2) For a definite period of two to ten years (Class 3 suspension) if the trier of fact finds that the person recklessly operated a motor vehicle in that situation for any distance and was involved in a motor vehicle collision that occurred on that left-hand roadway and the collision caused either physical harm to another person or the death of another person.⁹

The mandatory suspensions described above are in addition to any other penalty that the sentencing court is required or permitted to impose on the offender.¹⁰

In addition to establishing the license suspensions described above, the bill prohibits a person whose driver's license has been suspended under either of those suspensions from operating a motor vehicle upon the state's public roads or highways during the period of the suspension and establishes penalties for the offense. Under the bill, a person who drives in violation of the Class 7 license suspension described above is guilty of the offense of "driving under suspension imposed for driving the wrong way on an interstate freeway," a misdemeanor. The court is required to sentence that offender to a jail term of one year and may impose a fine of not more than \$1,000. A person who drives in violation of a Class 3 license suspension described above is guilty of the offense of "driving under suspension imposed for driving the wrong way on an interstate freeway and causing a person harm," a third degree felony. The court is

⁸ R.C. 4511.35(F).

⁹ R.C. 4511.35(D)(2)(a) and (b).

¹⁰ R.C. 4511.35(D)(2)(a) and (b).



required to sentence the offender to a definite prison term of three years and may impose a fine of not more than \$10,000 for the violation.¹¹

Existing penalties for driving under suspension

Existing law, unchanged by the bill, includes a general prohibition against operating a motor vehicle upon the public roads or highways during the period of a driver's license or nonresident operating privilege suspension imposed under any provision of the Revised Code other than the state's Financial Responsibility Law. The prohibition does not apply if the person has been granted limited driving privileges and is operating the vehicle in accordance with the terms of those privileges. A violation of the prohibition is a first degree misdemeanor. The sentencing court may impose upon the offender a Class 7 suspension (a definite period not to exceed one year) of his or her driver's license or nonresident operating privilege. If the vehicle is registered in the offender's name and if within the preceding three years the offender previously has been convicted of one or more violations of the prohibition or another specified violation, in addition to any other penalty it imposes, the sentencing court also may order either the immobilization of the vehicle and impoundment of its license plates for a specified number of days or the forfeiture of the vehicle. A court's determination of whether to order an immobilization or a forfeiture depends upon the number of prior convictions within the specified three-year period.¹² If a person who is subject to the bill's prohibition described in the preceding paragraph drives in violation of that prohibition, the sanctions and other provisions described in that paragraph apparently would apply instead of the provisions described in this paragraph.

Disqualification from operating a commercial motor vehicle

The bill requires the court sentencing an offender for driving a commercial motor vehicle upon the left-hand roadway of a divided interstate highway to direct the Registrar of Motor Vehicles to "disqualify" (see "**Definitions**," below) the offender from operating a commercial motor vehicle as follows:

(1) Subject to paragraphs (2) and (3), for a definite period not to exceed one year if the trier of fact finds that the person operated a commercial motor vehicle in that situation for a distance of 500 feet or more;

¹¹ R.C. 4510.19.

¹² R.C. 4510.11, not in the bill; also R.C. 4507.02(B), not in the bill.

(2) For a definite period of two to ten years if the violation caused physical harm to another person (it appears that this provision applies only when the bill makes the penalty for the violation a fourth degree felony, as described above); and

(3) For life if the violation caused the death of another person (it appears that this provision applies only when the bill makes the penalty for the violation a fourth degree felony, as described above).¹³

The mandatory disqualifications described above are in addition to any other penalty that the sentencing court is required or permitted to impose on the offender.¹⁴

Definitions

The bill uses the term "commercial motor vehicle." Although this term is not specifically defined for purposes of the bill, under the Commercial Motor Vehicle Law, "commercial motor vehicle" means any motor vehicle designed or used to transport persons or property that meets any of the following qualifications:

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

(2) Any single vehicle with a gross vehicle weight or gross vehicle weight rating of 26,001 pounds or more;

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

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

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

(6) Any single vehicle or combination of vehicles that is designed to be operated and to travel on a public street or highway and is considered by the Federal Motor Carrier Safety Administration to be a commercial motor vehicle, including, but not

¹³ R.C. 4506.16 and 4511.35(E)(1)(b) and (2).

¹⁴ R.C. 4511.35(E)(1)(b) and (2).

limited to, a motorized crane, a vehicle whose function is to pump cement, a rig for drilling wells, and a portable crane.¹⁵

The bill also uses the term "disqualification" but does not specifically define the term for purposes of the bill. However, under the Commercial Motor Vehicle Law, "disqualification" means any of the following: (1) the suspension, revocation, or cancellation of a person's privileges to operate a commercial motor vehicle, (2) any withdrawal of a person's privileges to operate a commercial motor vehicle as the result of a violation of state or local law relating to motor vehicle traffic control other than parking, vehicle weight, or vehicle defect violations, or (3) a determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. 391.¹⁶

The bill defines "physical harm to another person" to mean any injury, illness, or other physiological impairment, regardless of its gravity or duration.¹⁷

Background

In Ohio, a person who operates any motor vehicle the wrong way on a street or highway may be charged under one of several traffic laws, depending on the situation. The Revised Code currently does not establish a specific offense of operating a vehicle the wrong way on a roadway, but a person who does so could be charged under any of the following provisions, depending on the circumstances:

- (1) Disobeying traffic control devices;¹⁸
- (2) Reckless operation;¹⁹
- (3) Driving in violation of specified lanes of travel on roadways;²⁰
- (4) Driving in violation of rules for vehicles traveling in opposite directions;²¹

¹⁵ R.C. 4506.01(D), not in the bill.

¹⁶ R.C. 4506.01(G), not in the bill.

¹⁷ R.C. 4511.35(E), by reference to R.C. 2901.01, not in the bill.

¹⁸ R.C. 4511.12, not in the bill.

¹⁹ R.C. 4511.20, not in the bill.

²⁰ R.C. 4511.25, not in the bill.

²¹ R.C. 4511.26, not in the bill.

- (5) Driving in violation of rules for overtaking and passing of vehicles;²²
- (6) Driving to the left of center line;²³
- (7) Driving on the left side of a road;²⁴
- (8) Driving in violation of one-way designation of a highway;²⁵ and
- (9) Driving in violation of rules for divided highways.²⁶

Each of these offenses is a minor misdemeanor but may increase to a fourth or a third degree misdemeanor based on other specified traffic convictions within one year. Except for reckless operation, none of the offenses specifically requires a license suspension, although one may be imposed based an accumulation of twelve or more points against a person's license.²⁷ A court may impose a license suspension of a definite period of six months to one year (a Class 5 license suspension) for a reckless operation conviction.²⁸

HISTORY

ACTION	DATE
Introduced	04-06-15

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²² R.C. 4511.27, not in the bill.

²³ R.C. 4511.29, not in the bill.

²⁴ R.C. 4511.30, not in the bill.

²⁵ R.C. 4511.32, not in the bill.

²⁶ R.C. 4511.35.

²⁷ R.C. 4510.037, not in the bill.

²⁸ R.C. 4510.15, not in the bill.

