



Ohio Revised Code

Section 4506.17 Implied consent to tests - effect of refusal.

Effective: January 27, 2012

Legislation: House Bill 337 - 129th General Assembly

(A) Any person who holds a commercial driver's license or operates a commercial motor vehicle requiring a commercial driver's license within this state shall be deemed to have given consent to a test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the person's alcohol concentration or the presence of any controlled substance or a metabolite of a controlled substance.

(B) A test or tests as provided in division (A) of this section may be administered at the direction of a peace officer having reasonable ground to stop or detain the person and, after investigating the circumstances surrounding the operation of the commercial motor vehicle, also having reasonable ground to believe the person was driving the commercial vehicle while having a measurable or detectable amount of alcohol or of a controlled substance or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine. Any such test shall be given within two hours of the time of the alleged violation.

(C) A person requested to submit to a test under division (A) of this section shall be advised by the peace officer requesting the test that a refusal to submit to the test will result in the person immediately being placed out-of-service for a period of twenty-four hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year, and that the person is required to surrender the person's commercial driver's license to the peace officer.

(D) If a person refuses to submit to a test after being warned as provided in division (C) of this section or submits to a test that discloses the presence of an amount of alcohol or a controlled substance prohibited by divisions (A)(1) to (5) of section 4506.15 of the Revised Code or a metabolite of a controlled substance, the person immediately shall surrender the person's commercial driver's license to the peace officer. The peace officer shall forward the license, together with a sworn report, to the registrar of motor vehicles certifying that the test was requested pursuant to division (A) of this section and that the person either refused to submit to testing or submitted to a test that disclosed the presence of one of the prohibited concentrations of a substance listed in



divisions (A)(1) to (5) of section 4506.15 of the Revised Code or a metabolite of a controlled substance. The form and contents of the report required by this section shall be established by the registrar by rule, but shall contain the advice to be read to the driver and a statement to be signed by the driver acknowledging that the driver has been read the advice and that the form was shown to the driver.

(E) Upon receipt of a sworn report from a peace officer as provided in division (D) of this section, or upon receipt of notification that a person has been disqualified under a similar law of another state or foreign jurisdiction, the registrar shall disqualify the person named in the report from driving a commercial motor vehicle for the period described below:

(1) Upon a first incident, one year;

(2) Upon an incident of refusal or of a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance after one or more previous incidents of either refusal or of a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance, the person shall be disqualified for life or such lesser period as prescribed by rule by the registrar.

(F) A test of a person's whole blood or a person's blood serum or plasma given under this section shall comply with the applicable provisions of division (D) of section 4511.19 of the Revised Code and any physician, registered nurse, emergency medical technician-intermediate, emergency medical technician-paramedic, or qualified technician, chemist, or phlebotomist who withdraws whole blood or blood serum or plasma from a person under this section, and any hospital, first-aid station, clinic, or other facility at which whole blood or blood serum or plasma 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 of malpractice, for any act performed in withdrawing whole blood or blood serum or plasma from the person. The immunity provided in this division also extends to an emergency medical service organization that employs an emergency medical technician-intermediate or emergency medical technician-paramedic who withdraws blood under this section.

(G) When a person submits to a test under this section, the results of the test, at the person's request,



shall be made available to the person, the person's attorney, or the person's agent, immediately upon completion of the chemical test analysis. The person also may have an additional test administered by a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing as provided in division (D) of section 4511.19 of the Revised Code for tests administered under that section, and the failure to obtain such a test has the same effect as in that division.

(H) No person shall refuse to immediately surrender the person's commercial driver's license to a peace officer when required to do so by this section.

(I) A peace officer issuing an out-of-service order or receiving a commercial driver's license surrendered under this section may remove or arrange for the removal of any commercial motor vehicle affected by the issuance of that order or the surrender of that license.

(J)(1) Except for civil actions arising out of the operation of a motor vehicle and civil actions in which the state is a plaintiff, no peace officer of any law enforcement agency within this state is liable in compensatory damages in any civil action that arises under the Revised Code or common law of this state for an injury, death, or loss to person or property caused in the performance of official duties under this section and rules adopted under this section, unless the officer's actions were manifestly outside the scope of the officer's employment or official responsibilities, or unless the officer acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

(2) Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is a plaintiff, no peace officer of any law enforcement agency within this state is liable in punitive or exemplary damages in any civil action that arises under the Revised Code or common law of this state for any injury, death, or loss to person or property caused in the performance of official duties under this section of the Revised Code and rules adopted under this section, unless the officer's actions were manifestly outside the scope of the officer's employment or official responsibilities, or unless the officer acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

(K) When disqualifying a driver, the registrar shall cause the records of the bureau of motor vehicles to be updated to reflect the disqualification within ten days after it occurs.



(L) The registrar immediately shall notify a driver who is subject to disqualification of the disqualification, of the length of the disqualification, and that the driver may request a hearing within thirty days of the mailing of the notice to show cause why the driver should not be disqualified from operating a commercial motor vehicle. If a request for such a hearing is not made within thirty days of the mailing of the notice, the order of disqualification is final. The registrar may designate hearing examiners who, after affording all parties reasonable notice, shall conduct a hearing to determine whether the disqualification order is supported by reliable evidence. The registrar shall adopt rules to implement this division.

(M) Any person who is disqualified from operating a commercial motor vehicle under this section may apply to the registrar for a driver's license to operate a motor vehicle other than a commercial motor vehicle, provided the person's commercial driver's license is not otherwise suspended. A person whose commercial driver's license is suspended shall not apply to the registrar for or receive a driver's license under Chapter 4507. of the Revised Code during the period of suspension.

(N) Whoever violates division (H) of this section is guilty of a misdemeanor of the first degree.

(O) As used in this section, "emergency medical technician-intermediate" and "emergency medical technician-paramedic" have the same meanings as in section 4765.01 of the Revised Code.