Week of April 23, 2012

Below is an update on legislative happenings this week in the Ohio General Assembly that are of interest to property and casualty insurance companies. Please let us know if you have questions on any of the issues.

All weekly legislative updates for 2011 and 2012 are archived and available by clicking here.

The following bill was recently added to the OII Bill Watch list. Please let us know if you have comments or concerns regarding this bill. All Bill Watch updates can be accessed here.

**Senate Bills**

**SB 336- VEHICLE OPERATIONS** (Wagoner) To increase the penalties related to operating a motor vehicle on the wrong side of an interstate freeway. [Click here to view SB 336 as introduced](#)

**Passed by the Senate**

**SB 310-Exotic Animals**

The Senate passed SB 310 by a 30-1 vote on Wednesday. The legislation is sponsored by Sen. Troy Balderson (R-Zanesville) and would establish requirements governing the possession of dangerous wild animals and restricted snakes.

Earlier in the day, the Senate Agriculture, Environment, and Natural Resources Committee unanimously passed the bill after accepting several amendments, which would:

- Lower the cost of a restricted snake permit to $150 and reduce the cost of a restricted snake propagation permit to $300
- Give the Director of the Ohio Department of Agriculture discretion in terms of determining acreage needed to house animals
- Require the Director of Agriculture to issue rescue sanctuary permits if animals have been sterilized
- Make the Director of Agriculture wait two years before proposing - through administrative rule - changes in the definition of dangerous wild animals and restricted snakes
On the Senate floor, Sen. Balderson said certain proposed permit fees will help defray the cost of the regulatory program, and noted that fees will start being collected in 2014. He said it is estimated that the cost for the program could reach about $800,000 between enactment and the beginning of fee collections.

Last week, a substitute version of the bill was accepted in committee and would make a number of changes from the introduced legislation, including exempting constricting snakes from liability insurance requirements, allowing owners to obtain bonds in lieu of liability insurance, permitting owners of venomous snakes to access anti-venom at a hospital, and clarifying that to obtain a wildlife shelter permit owners of restricted primates would have to abide by standards established in the federal Animal Welfare Act.

The bill now goes to the House for consideration.

We will continue to follow this legislation.

Click here to view SB 310 as passed by the Senate

**Mid-Biennium Review (MBR)**

Hearings continued this week on a series of bills which make up the mid-biennium review and focus on issues including education and workforce development, energy, tax reform, and capital improvements.

**HB 487 – MBR**

This week the Ohio House passed HB 487, which is the main portion of Governor Kasich’s mid-biennium review, with a bipartisan vote of 62-34. HB 487 As Passed by the House contains a couple of items of interest to property casualty insurance companies.

One item of interest is a provision that allows the director of the Department of Public Safety (DPS) to approve a remedial driving course that is conducted entirely via video teleconferencing. The OII has communicated with the DPS and they have concerns with this provision. This language can be found in the HB 487 attachment on pages 6-8. Current law calls for at least 50% of remedial driving classes to be completed in person.

The House did remove language that instructed the director of DPS to adopt rules governing online education courses that may be completed via the internet to satisfy the classroom instruction portion of driver’s education classes. Currently, Ohio requires 24 hours of classroom instruction.

HB 487 now goes to the Senate for consideration.
HB 508 – Tax Laws

The Ohio House also passed HB 508, which imposes the tax law changes portions of the MBR. HB 508 was amended in committee to include language clarifying a Commercial Activity Tax (CAT) exemption for surplus lines insurance. The Cincinnati Insurance Companies had requested that change. The language can be found in the HB 508 attachment on page 5.

This amendment addresses the concerns that Scott Gilliam of Cincinnati Insurance raised while testifying on HB 510 last week. HB 510 as introduced removed the CAT exemption for surplus lines of insurance. The amendment had no objections, so it was included in the fast-tracked HB 508.

HB 508 now goes to the Senate for consideration.

House Republicans Appoint Scherer To Fill Peterson Seat

House Republicans have selected Gary Scherer, a Circleville business owner, to fill a vacancy in the 85th House District. He will succeed Sen. Bob Peterson (R-Sabina), who was recently appointed to the Senate.

Scherer co-founded two CPA firms and is a past member of the Ohio Society of CPAs.
correction under section 5120.59 of the Revised Code or an identification card issued by the department of youth services under section 5139.511 of the Revised Code shall be sufficient documentary evidence under this division upon verification of the applicant's social security number by the registrar or a deputy registrar. Upon issuing an identification card under this section for a person who has been issued an identification card under section 5120.59 or section 5139.511 of the Revised Code, the registrar or deputy registrar shall destroy the identification card issued under section 5120.59 or section 5139.511 of the Revised Code.

All applications for an identification card or duplicate shall be filed in duplicate, and if submitted to a deputy registrar, a copy shall be forwarded to the registrar. The registrar shall prescribe rules for the manner in which a deputy registrar is to file and maintain applications and other records. The registrar shall maintain a suitable, indexed record of all applications denied and cards issued or canceled.

(C) In addition to any other information it contains, on and after the date that is fifteen months after the effective date of this amendment April 7, 2009, the form furnished by the registrar of motor vehicles for an application for an identification card or duplicate shall inform applicants that the applicant must present a copy of the applicant's DD-214 or an equivalent document in order to qualify to have the card or duplicate indicate that the applicant is an honorably discharged veteran of the armed forces of the United States based on a request made pursuant to division (A)(2)(b) of this section.

Sec. 4510.037. (A) When the registrar of motor vehicles determines that the total points charged against any person under section 4510.036 of the Revised Code exceed five, the registrar
shall send a warning letter to the person at the person's last known address by regular mail. The warning letter shall list the reported violations that are the basis of the points charged, list the number of points charged for each violation, and outline the suspension provisions of this section.

(B) When the registrar determines that the total points charged against any person under section 4510.036 of the Revised Code within any two-year period beginning on the date of the first conviction within the two-year period is equal to twelve or more, the registrar shall send a written notice to the person at the person's last known address by regular mail. The notice shall list the reported violations that are the basis of the points charged, list the number of points charged for each violation, and state that, because the total number of points charged against the person within the applicable two-year period is equal to twelve or more, the registrar is imposing a class D suspension of the person's driver's or commercial driver's license or permit or nonresident operating privileges for the period of time specified in division (B)(4) of section 4510.02 of the Revised Code. The notice also shall state that the suspension is effective on the twentieth day after the mailing of the notice, unless the person files a petition appealing the determination and suspension in the municipal court, county court, or, if the person is under the age of eighteen, the juvenile division of the court of common pleas in whose jurisdiction the person resides or, if the person is not a resident of this state, in the Franklin county municipal court or juvenile division of the Franklin county court of common pleas. By filing the appeal of the determination and suspension, the person agrees to pay the cost of the proceedings in the appeal of the determination and suspension and alleges that the person can show cause why the person's driver's or commercial driver's license or permit or nonresident operating privileges should not be suspended.
(C)(1) Any person against whom at least two but less than
twelve points have been charged under section 4510.036 of the
Revised Code may enroll in a course of remedial driving
instruction that is approved by the director of public safety.
Upon the person's completion of an approved course of remedial
driving instruction, the person may apply to the registrar on a
form prescribed by the registrar for a credit of two points on the
person's driving record. Upon receipt of the application and proof
of completion of the approved remedial driving course, the
registrar shall approve the two-point credit. The registrar shall
not approve any credits for a person who completes an approved
course of remedial driving instruction pursuant to a judge's order
under section 4510.02 of the Revised Code.

(2) In any three-year period, the registrar shall approve
only one two-point credit on a person's driving record under
division (C)(1) of this section. The registrar shall approve not
more than five two-point credits on a person's driving record
under division (C)(1) of this section during that person's
lifetime.

(D) When a judge of a court of record suspends a person's
driver's or commercial driver's license or permit or nonresident
operating privilege and charges points against the person under
section 4510.036 of the Revised Code for the offense that resulted
in the suspension, the registrar shall credit that period of
suspension against the time of any subsequent suspension imposed
under this section for which those points were used to impose the
subsequent suspension. When a United States district court that
has jurisdiction within this state suspends a person's driver's or
commercial driver's license or permit or nonresident operating
4381 (1988), 18 U.S.C.A. 13, as amended, the district court
prepares an abstract pursuant to section 4510.031 of the Revised
Code, and the district court charges points against the person under section 4510.036 of the Revised Code for the offense that resulted in the suspension, the registrar shall credit the period of suspension imposed by the district court against the time of any subsequent suspension imposed under this section for which the points were used to impose the subsequent suspension.

(E) The registrar, upon the written request of a licensee who files a petition under division (B) of this section, shall furnish the licensee a certified copy of the registrar's record of the convictions and bond forfeitures of the person. This record shall include the name, address, and date of birth of the licensee; the name of the court in which each conviction or bail forfeiture took place; the nature of the offense that was the basis of the conviction or bond forfeiture; and any other information that the registrar considers necessary. If the record indicates that twelve points or more have been charged against the person within a two-year period, it is prima-facie evidence that the person is a repeat traffic offender, and the registrar shall suspend the person's driver's or commercial driver's license or permit or nonresident operating privilege pursuant to division (B) of this section.

In hearing the petition and determining whether the person filing the petition has shown cause why the person's driver's or commercial driver's license or permit or nonresident operating privilege should not be suspended, the court shall decide the issue on the record certified by the registrar and any additional relevant, competent, and material evidence that either the registrar or the person whose license is sought to be suspended submits.

(F) If a petition is filed under division (B) of this section in a county court, the prosecuting attorney of the county in which the case is pending shall represent the registrar in the
proceedings, except that, if the petitioner resides in a municipal corporation within the jurisdiction of the county court, the city director of law, village solicitor, or other chief legal officer of the municipal corporation shall represent the registrar in the proceedings. If a petition is filed under division (B) of this section in a municipal court, the registrar shall be represented in the resulting proceedings as provided in section 1901.34 of the Revised Code.

(G) If the court determines from the evidence submitted that a person who filed a petition under division (B) of this section has failed to show cause why the person's driver's or commercial driver's license or permit or nonresident operating privileges should not be suspended, the court shall assess against the person the cost of the proceedings in the appeal of the determination and suspension and shall impose the applicable suspension under this section or suspend all or a portion of the suspension and impose any conditions upon the person that the court considers proper or impose upon the person a community control sanction pursuant to section 2929.15 or 2929.25 of the Revised Code. If the court determines from the evidence submitted that a person who filed a petition under division (B) of this section has shown cause why the person's driver's or commercial driver's license or permit or nonresident operating privileges should not be suspended, the costs of the appeal proceeding shall be paid out of the county treasury of the county in which the proceedings were held.

(H) Any person whose driver's or commercial driver's license or permit or nonresident operating privileges are suspended under this section is not entitled to apply for or receive a new driver's or commercial driver's license or permit or to request or be granted nonresident operating privileges during the effective period of the suspension.

(I) Upon the termination of any suspension or other penalty
imposed under this section involving the surrender of license or permit and upon the request of the person whose license or permit was suspended or surrendered, the registrar shall return the license or permit to the person upon determining that the person has complied with all provisions of section 4510.038 of the Revised Code or, if the registrar destroyed the license or permit pursuant to section 4510.52 of the Revised Code, shall reissue the person's license or permit.

(J) Any person whose driver's or commercial driver's license or permit or nonresident operating privileges are suspended as a repeat traffic offender under this section and who, during the suspension, operates any motor vehicle upon any public roads and highways is guilty of driving under a twelve-point suspension, a misdemeanor of the first degree. The court shall sentence the offender to a minimum term of three days in jail. No court shall suspend the first three days of jail time imposed pursuant to this division.

(K) The registrar, in accordance with specific statutory authority, may suspend the privilege of driving a motor vehicle on the public roads and highways of this state that is granted to nonresidents by section 4507.04 of the Revised Code.

(L) Any course of remedial driving instruction the director of public safety approves under this section shall require its students to attend at least fifty per cent of the course in person. The director shall not approve any course of remedial driving instruction that permits its students to take more than fifty per cent of the course in any other manner, including via video teleconferencing or the internet.

(2) The director may approve a course of remedial instruction that permits students to take the entire course via video teleconferencing. In accordance with division (C) of this section,
upon receiving an application with a certificate or other proof of completion of a course approved under this division, the registrar shall approve the two-point reduction.

Sec. 4510.038. (A) Any person whose driver's or commercial driver's license or permit is suspended or who is granted limited driving privileges under section 4510.037, under division (H) of section 4511.19, or under section 4510.07 of the Revised Code for a violation of a municipal ordinance that is substantially equivalent to division (B) of section 4511.19 of the Revised Code is not eligible to retain the license, or to have the driving privileges reinstated, until each of the following has occurred:

(1) The person successfully completes a course of remedial driving instruction approved by the director of public safety. A minimum of twenty-five per cent of the number of hours of instruction included in the course shall be devoted to instruction on driver attitude.

The course also shall devote a number of hours to instruction in the area of alcohol and drugs and the operation of vehicles. The instruction shall include, but not be limited to, a review of the laws governing the operation of a vehicle while under the influence of alcohol, drugs, or a combination of them, the dangers of operating a vehicle while under the influence of alcohol, drugs, or a combination of them, and other information relating to the operation of vehicles and the consumption of alcoholic beverages and use of drugs. The director, in consultation with the director of alcohol and drug addiction services, shall prescribe the content of the instruction. The number of hours devoted to the area of alcohol and drugs and the operation of vehicles shall comprise a minimum of twenty-five per cent of the number of hours of instruction included in the course.

(2) The person is examined in the manner provided for in...
section 4507.20 of the Revised Code, and found by the registrar of motor vehicles to be qualified to operate a motor vehicle;

(3) The person gives and maintains proof of financial responsibility, in accordance with section 4509.45 of the Revised Code.

(B) Any course of remedial driving instruction the director of public safety approves under this section shall require its students to attend at least fifty per cent of the course in person. The director shall not approve any course of remedial driving instruction that permits its students to take more than fifty per cent of the course in any other manner, including via video teleconferencing or the internet.

(2) The director may approve a course of remedial instruction that permits students to take the entire course via video teleconferencing or the internet.

Sec. 4511.191. (A)(1) As used in this section:

(a) "Physical control" has the same meaning as in section 4511.194 of the Revised Code.

(b) "Alcohol monitoring device" means any device that provides for continuous alcohol monitoring, any ignition interlock device, any immobilizing or disabling device other than an ignition interlock device that is constantly available to monitor the concentration of alcohol in a person's system, or any other device that provides for the automatic testing and periodic reporting of alcohol consumption by a person and that a court orders a person to use as a sanction imposed as a result of the person's conviction of or plea of guilty to an offense.

(2) Any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property
the tax commissioner all original tax returns prepared by the tax return preparer. This division does not apply to a tax return preparer for a tax return in any calendar year that ends before January 1, 2013, if, during the previous calendar year, the tax return preparer prepared no more than twenty-five original tax returns. This division does not apply to a tax return preparer in any calendar year that begins on or after January 1, 2013, if, during the previous calendar year, the tax return preparer prepared not more than ten original tax returns.

(D) If a tax return preparer required by this section to submit original tax returns by electronic technology files an original tax return by some means other than by electronic technology, the tax commissioner shall impose a penalty of fifty dollars for each return, in excess of seventy-five in a calendar year 2010, 2011, or 2012, or in excess of eleven in any calendar year thereafter, that is not filed by electronic technology. Upon good cause shown by the tax return preparer, the tax commissioner may waive all or any portion of the penalty or may refund all or any portion of the penalty the tax return preparer has paid.

Sec. 5751.01. As used in this chapter:

(A) "Person" means, but is not limited to, individuals, combinations of individuals of any form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partnerships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, for-profit corporations, S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal income tax purposes, and any other entities.

(B) "Consolidated elected taxpayer" means a group of two or more persons treated as a single taxpayer for purposes of this
chapter as the result of an election made under section 5751.011 of the Revised Code.

(C) "Combined taxpayer" means a group of two or more persons treated as a single taxpayer for purposes of this chapter under section 5751.012 of the Revised Code.

(D) "Taxpayer" means any person, or any group of persons in the case of a consolidated elected taxpayer or combined taxpayer treated as one taxpayer, required to register or pay tax under this chapter. "Taxpayer" does not include excluded persons.

(E) "Excluded person" means any of the following:

1. Any person with not more than one hundred fifty thousand dollars of taxable gross receipts during the calendar year. Division (E)(1) of this section does not apply to a person that is a member of a consolidated elected taxpayer;

2. A public utility that paid the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter, except that a public utility that is a combined company is a taxpayer with regard to the following gross receipts:

   a. Taxable gross receipts directly attributed to a public utility activity, but not directly attributed to an activity that is subject to the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code;

   b. Taxable gross receipts that cannot be directly attributed to any activity, multiplied by a fraction whose numerator is the taxable gross receipts described in division (E)(2)(a) of this section and whose denominator is the total taxable gross receipts that can be directly attributed to any activity;

   c. Except for any differences resulting from the use of an accrual basis method of accounting for purposes of determining
gross receipts under this chapter and the use of the cash basis method of accounting for purposes of determining gross receipts under section 5727.24 of the Revised Code, the gross receipts directly attributed to the activity of a natural gas company shall be determined in a manner consistent with division (D) of section 5727.03 of the Revised Code.

As used in division (E)(2) of this section, "combined company" and "public utility" have the same meanings as in section 5727.01 of the Revised Code.

(3) A financial institution, as defined in section 5725.01 of the Revised Code, that paid the corporation franchise tax charged by division (D) of section 5733.06 of the Revised Code based on one or more taxable years that include the entire tax period under this chapter;

(4) A dealer in intangibles, as defined in section 5725.01 of the Revised Code, that paid the dealer in intangibles tax levied by division (D) of section 5707.03 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter;

(5) A financial holding company as defined in the "Bank Holding Company Act," 12 U.S.C. 1841(p);

(6) A bank holding company as defined in the "Bank Holding Company Act," 12 U.S.C. 1841(a);

(7) A savings and loan holding company as defined in the "Home Owners Loan Act," 12 U.S.C. 1467a(a)(1)(D) that is engaging only in activities or investments permissible for a financial holding company under 12 U.S.C. 1843(k);

(8) A person directly or indirectly owned by one or more financial institutions, financial holding companies, bank holding companies, or savings and loan holding companies described in division (E)(3), (5), (6), or (7) of this section that is engaged
in activities permissible for a financial holding company under 12 U.S.C. 1843(k), except that any such person held pursuant to merchant banking authority under 12 U.S.C. 1843(k)(4)(H) or 12 U.S.C. 1843(k)(4)(I) is not an excluded person, or a person directly or indirectly owned by one or more insurance companies described in division (E)(9) of this section that is authorized to do the business of insurance in this state.

For the purposes of division (E)(8) of this section, a person owns another person under the following circumstances:

(a) In the case of corporations issuing capital stock, one corporation owns another corporation if it owns fifty per cent or more of the other corporation's capital stock with current voting rights;

(b) In the case of a limited liability company, one person owns the company if that person's membership interest, as defined in section 1705.01 of the Revised Code, is fifty per cent or more of the combined membership interests of all persons owning such interests in the company;

(c) In the case of a partnership, trust, or other unincorporated business organization other than a limited liability company, one person owns the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses, or distributions of fifty per cent or more of the combined beneficial interests of all persons having such an interest in the organization;

(d) In the case of multiple ownership, the ownership interests of more than one person may be aggregated to meet the fifty per cent ownership tests in this division only when each such owner is described in division (E)(3), (5), (6), or (7) of this section and is engaged in activities permissible for a
financial holding company under 12 U.S.C. 1843(k) or is a person

directly or indirectly owned by one or more insurance companies
described in division (E)(9) of this section that is authorized to
do the business of insurance in this state.

(9) A domestic insurance company or foreign insurance

cOMPANY, as defined in section 5725.01 of the Revised Code, that
paid the insurance company premiums tax imposed by section 5725.18
or Chapter 5729. of the Revised Code, or an unauthorized insurance
company whose gross premiums are subject to tax under section
3905.36 of the Revised Code based on one or more measurement
periods that include the entire tax period under this chapter;

(10) A person that solely facilitates or services one or more
securitizations or similar transactions for any person described
in division (E)(3), (5), (6), (7), (8), or (9) of this section.
For purposes of this division, "securitization" means transferring
one or more assets to one or more persons and then issuing
securities backed by the right to receive payment from the asset
or assets so transferred.

(11) Except as otherwise provided in this division, a
pre-income tax trust as defined in division (FF)(4) of section
5747.01 of the Revised Code and any pass-through entity of which
such pre-income tax trust owns or controls, directly, indirectly,
or constructively through related interests, more than five per
cent of the ownership or equity interests. If the pre-income tax
trust has made a qualifying pre-income tax trust election under
division (FF)(3) of section 5747.01 of the Revised Code, then the
trust and the pass-through entities of which it owns or controls,
directly, indirectly, or constructively through related interests,
more than five per cent of the ownership or equity interests,
shall not be excluded persons for purposes of the tax imposed
under section 5751.02 of the Revised Code.

(12) Nonprofit organizations or the state and its agencies,
instrumentalities, or political subdivisions.

(F) Except as otherwise provided in divisions (F)(2), (3), and (4) of this section, "gross receipts" means the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration.

(1) The following are examples of gross receipts:

(a) Amounts realized from the sale, exchange, or other disposition of the taxpayer's property to or with another;

(b) Amounts realized from the taxpayer's performance of services for another;

(c) Amounts realized from another's use or possession of the taxpayer's property or capital;

(d) Any combination of the foregoing amounts.

(2) "Gross receipts" excludes the following amounts:

(a) Interest income except interest on credit sales;

(b) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity as defined under section 5733.04 of the Revised Code;

(c) Receipts from the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits,