

As Introduced

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H. B. No. 320

Representative Jones

**Cosponsors: Representatives Brown, Evans, McGregor, J., Schindel,
Stebelton, Uecker**

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A B I L L

To amend sections 4511.093, 4511.81, and 4513.263 of 1
the Revised Code to require certain children who 2
are between four and eight years of age to be 3
secured in a booster seat and to require children 4
less than age eighteen to be restrained in an 5
occupant restraining device if not otherwise 6
required to be in a child restraint system or 7
booster seat. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4511.093, 4511.81, and 4513.263 of 9
the Revised Code be amended to read as follows: 10

Sec. 4511.093. (A)(1) No law enforcement officer who stops 11
the operator of a motor vehicle in the course of an authorized 12
sobriety or other motor vehicle checkpoint operation or a motor 13
vehicle safety inspection shall issue a ticket, citation, or 14
summons for a secondary traffic offense unless in the course of 15
the checkpoint operation or safety inspection the officer first 16
determines that an offense other than a secondary traffic offense 17
has occurred and either places the operator or a vehicle occupant 18

under arrest or issues a ticket, citation, or summons to the operator or a vehicle occupant for an offense other than a secondary offense.

(2) A law enforcement agency that operates a motor vehicle checkpoint for an express purpose related to a secondary traffic offense shall not issue a ticket, citation, or summons for any secondary traffic offense at such a checkpoint, but may use such a checkpoint operation to conduct a public awareness campaign and distribute information.

(B) As used in this section, "secondary traffic offense" means a violation of division (A) or (F)(2) of section 4507.05, division (B)(1)(a) or (b) or (E) of section 4507.071, division ~~(C)~~(D) of section 4511.81, or division (B) of section 4513.263 of the Revised Code.

Sec. 4511.81. (A) When any child who is in either or both of the following categories is being transported in a motor vehicle, other than a taxicab or public safety vehicle as defined in section 4511.01 of the Revised Code, that is required by the United States department of transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards:

(1) A child who is less than four years of age;

(2) A child who weighs less than forty pounds.

(B) When any child who is in either or both of the following categories is being transported in a motor vehicle, other than a taxicab, that is owned, leased, or otherwise under the control of a nursery school, kindergarten, or day-care center, the operator

of the motor vehicle shall have the child properly secured in 49
accordance with the manufacturer's instructions in a child 50
restraint system that meets federal motor vehicle safety 51
standards: 52

(1) A child who is less than four years of age; 53

(2) A child who weighs less than forty pounds. 54

(C) When any child who is less than eight years of age and 55
less than four feet nine inches in height, who is not required by 56
division (A) or (B) of this section to be secured in a child 57
restraint system, is being transported in a motor vehicle, other 58
than a taxicab or public safety vehicle as defined in section 59
4511.01 of the Revised Code, that is registered in this state and 60
is required by the United States department of transportation to 61
be equipped with seat belts at the time of manufacture or 62
assembly, the operator of the motor vehicle shall have the child 63
properly secured in accordance with the manufacturer's 64
instructions on a booster seat that meets federal motor vehicle 65
safety standards. 66

(D) When any child who is at least four years of age but not 67
older than ~~fifteen~~ eighteen years of age, and who is not otherwise 68
required by division (A), (B), or (C) of this section to be 69
secured in a child restraint system or booster seat, is being 70
transported in a motor vehicle, other than a taxicab or public 71
safety vehicle as defined in section 4511.01 of the Revised Code, 72
that is required by the United States department of transportation 73
to be equipped with seat belts at the time of manufacture or 74
assembly, the operator of the motor vehicle shall have the child 75
properly restrained either in accordance with the manufacturer's 76
instructions in a child restraint system that meets federal motor 77
vehicle safety standards or in an occupant restraining device as 78
defined in section 4513.263 of the Revised Code. 79

~~(D)~~(E) Notwithstanding any provision of law to the contrary, 81
no law enforcement officer shall cause an operator of a motor 82
vehicle being operated on any street or highway to stop the motor 83
vehicle for the sole purpose of determining whether a violation of 84
division ~~(C)~~(D) of this section has been or is being committed or 85
for the sole purpose of issuing a ticket, citation, or summons for 86
a violation of that nature or causing the arrest of or commencing 87
a prosecution of a person for a violation of that nature, and no 88
law enforcement officer shall view the interior or visually 89
inspect any automobile being operated on any street or highway for 90
the sole purpose of determining whether a violation of that nature 91
has been or is being committed. 92

~~(E)~~(F) The director of public safety shall adopt such rules 93
as are necessary to carry out this section. 94

~~(F)~~(G) The failure of an operator of a motor vehicle to 95
secure a child in a child restraint system, a booster seat, or ~~in~~ 96
an occupant restraining device as required by this section is not 97
negligence imputable to the child, is not admissible as evidence 98
in any civil action involving the rights of the child against any 99
other person allegedly liable for injuries to the child, is not to 100
be used as a basis for a criminal prosecution of the operator of 101
the motor vehicle other than a prosecution for a violation of this 102
section, and is not admissible as evidence in any criminal action 103
involving the operator of the motor vehicle other than a 104
prosecution for a violation of this section. 105

~~(G)~~(H) This section does not apply when an emergency exists 106
that threatens the life of any person operating a motor vehicle 107
and to whom this section otherwise would apply or the life of any 108
child who otherwise would be required to be restrained under this 109
section. This section does not apply to a person operating a motor 110
vehicle who has an affidavit signed by a physician licensed to 111
practice in this state under Chapter 4731. of the Revised Code or 112

a chiropractor licensed to practice in this state under Chapter 113
4734. of the Revised Code that states that the child who otherwise 114
would be required to be restrained under this section has a 115
physical impairment that makes use of a child restraint system, 116
booster seat, or an occupant restraining device impossible or 117
impractical, provided that the person operating the vehicle has 118
safely and appropriately restrained the child in accordance with 119
any recommendations of the physician or chiropractor as noted on 120
the affidavit. 121

~~(H)~~(I) There is hereby created in the state treasury the 122
"child highway safety fund," consisting of fines imposed pursuant 123
to division ~~(J)~~(K)(1) of this section for violations of divisions 124
(A), (B), ~~and~~ (C), and (D) of this section. The money in the fund 125
shall be used by the department of health only to defray the cost 126
of designating hospitals as pediatric trauma centers under section 127
3727.081 of the Revised Code and to establish and administer a 128
child highway safety program. The purpose of the program shall be 129
to educate the public about child restraint systems ~~generally and~~ 130
booster seats and the importance of their proper use. The program 131
also shall include a process for providing child restraint systems 132
and booster seats to persons who meet the eligibility criteria 133
established by the department, and a toll-free telephone number 134
the public may utilize to obtain information about child restraint 135
systems and booster seats, and their proper use. 136

~~(I)~~(J) The director of health, in accordance with Chapter 137
119. of the Revised Code, shall adopt any rules necessary to carry 138
out this section, including rules establishing the criteria a 139
person must meet in order to receive a child restraint system or 140
booster seat under the department's child ~~restraint system~~ highway 141
safety program; provided that rules relating to the verification 142
of pediatric trauma centers shall not be adopted under this 143
section. 144

~~(J)~~(K)(1) Whoever violates division (A), (B), ~~or (C)~~, or (D) 145
of this section shall be punished as follows: 146

(a) Except as otherwise provided in division ~~(J)~~(K)(1)(b) of 147
this section, the offender is guilty of a minor misdemeanor and 148
shall be fined not less than twenty-five dollars. 149

(b) If the offender previously has been convicted of or 150
pleaded guilty to a violation of division (A), (B), ~~or (C)~~, or (D) 151
of this section or of a municipal ordinance that is substantially 152
similar to any of those divisions, the offender is guilty of a 153
misdemeanor of the fourth degree. 154

(2) All fines imposed pursuant to division ~~(J)~~(K)(1) of this 155
section shall be forwarded to the treasurer of state for deposit 156
in the "child highway safety fund" created by division ~~(H)~~(I) of 157
this section. 158

Sec. 4513.263. (A) As used in this section and in section 159
4513.99 of the Revised Code: 160

(1) "Automobile" means any commercial tractor, passenger car, 161
commercial car, or truck that is required to be factory-equipped 162
with an occupant restraining device for the operator or any 163
passenger by regulations adopted by the United States secretary of 164
transportation pursuant to the "National Traffic and Motor Vehicle 165
Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392. 166

(2) "Occupant restraining device" means a seat safety belt, 167
shoulder belt, harness, or other safety device for restraining a 168
person who is an operator of or passenger in an automobile and 169
that satisfies the minimum federal vehicle safety standards 170
established by the United States department of transportation. 171

(3) "Passenger" means any person in an automobile, other than 172
its operator, who is occupying a seating position for which an 173
occupant restraining device is provided. 174

(4) "Commercial tractor," "passenger car," and "commercial car" have the same meanings as in section 4501.01 of the Revised Code. 175
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(5) "Vehicle" and "motor vehicle," as used in the definitions of the terms set forth in division (A)(4) of this section, have the same meanings as in section 4511.01 of the Revised Code. 178
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(6) "Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim, as defined in section 2307.71 of the Revised Code, and an asbestos claim, as defined in section 2307.91 of the Revised Code, but does not include a civil action for damages for breach of contract or another agreement between persons. 181
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(B) No person shall do any of the following: 188

(1) Operate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device, or operate a school bus that has an occupant restraining device installed for use in its operator's seat unless that person is wearing all of the available elements of the device, as properly adjusted; 189
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(2) Operate an automobile on any street or highway unless each passenger in the automobile who is subject to the requirement set forth in division (B)(3) of this section is wearing all of the available elements of a properly adjusted occupant restraining device; 195
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(3) Occupy, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device; 200
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(4) Operate a taxicab on any street or highway unless all factory-equipped occupant restraining devices in the taxicab are 204
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maintained in usable form. 206

(C) Division (B)(3) of this section does not apply to a 207
person who is required by section 4511.81 of the Revised Code to 208
be secured in a child restraint device or booster seat. Division 209
(B)(1) of this section does not apply to a person who is an 210
employee of the United States postal service or of a newspaper 211
home delivery service, during any period in which the person is 212
engaged in the operation of an automobile to deliver mail or 213
newspapers to addressees. Divisions (B)(1) and (3) of this section 214
do not apply to a person who has an affidavit signed by a 215
physician licensed to practice in this state under Chapter 4731. 216
of the Revised Code or a chiropractor licensed to practice in this 217
state under Chapter 4734. of the Revised Code that states that the 218
person has a physical impairment that makes use of an occupant 219
restraining device impossible or impractical. 220

(D) Notwithstanding any provision of law to the contrary, no 221
law enforcement officer shall cause an operator of an automobile 222
being operated on any street or highway to stop the automobile for 223
the sole purpose of determining whether a violation of division 224
(B) of this section has been or is being committed or for the sole 225
purpose of issuing a ticket, citation, or summons for a violation 226
of that nature or causing the arrest of or commencing a 227
prosecution of a person for a violation of that nature, and no law 228
enforcement officer shall view the interior or visually inspect 229
any automobile being operated on any street or highway for the 230
sole purpose of determining whether a violation of that nature has 231
been or is being committed. 232

(E) All fines collected for violations of division (B) of 233
this section, or for violations of any ordinance or resolution of 234
a political subdivision that is substantively comparable to that 235
division, shall be forwarded to the treasurer of state for deposit 236
as follows: 237

(1) Eight per cent shall be deposited into the seat belt education fund, which is hereby created in the state treasury, and shall be used by the department of public safety to establish a seat belt education program.

(2) Eight per cent shall be deposited into the elementary school program fund, which is hereby created in the state treasury, and shall be used by the department of public safety to establish and administer elementary school programs that encourage seat safety belt use.

(3) Two per cent shall be deposited into the occupational licensing and regulatory fund created by section 4743.05 of the Revised Code.

(4) Twenty-eight per cent shall be deposited into the trauma and emergency medical services fund, which is hereby created in the state treasury, and shall be used by the department of public safety for the administration of the division of emergency medical services and the state board of emergency medical services.

(5) Fifty-four per cent shall be deposited into the trauma and emergency medical services grants fund, which is hereby created in the state treasury, and shall be used by the state board of emergency medical services to make grants, in accordance with section 4765.07 of the Revised Code and rules the board adopts under section 4765.11 of the Revised Code.

(F)(1) Subject to division (F)(2) of this section, the failure of a person to wear all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(1) or (3) of this section or the failure of a person to ensure that each minor who is a passenger of an automobile being operated by that person is wearing all of the available elements of a properly adjusted occupant restraining device in violation of division (B)(2) of this section shall not be

considered or used by the trier of fact in a tort action as 269
evidence of negligence or contributory negligence. But, the trier 270
of fact may determine based on evidence admitted consistent with 271
the Ohio Rules of Evidence that the failure contributed to the 272
harm alleged in the tort action and may diminish a recovery of 273
compensatory damages that represents noneconomic loss, as defined 274
in section 2307.011 of the Revised Code, in a tort action that 275
could have been recovered but for the plaintiff's failure to wear 276
all of the available elements of a properly adjusted occupant 277
restraining device. Evidence of that failure shall not be used as 278
a basis for a criminal prosecution of the person other than a 279
prosecution for a violation of this section; and shall not be 280
admissible as evidence in a criminal action involving the person 281
other than a prosecution for a violation of this section. 282

(2) If, at the time of an accident involving a passenger car 283
equipped with occupant restraining devices, any occupant of the 284
passenger car who sustained injury or death was not wearing an 285
available occupant restraining device, was not wearing all of the 286
available elements of such a device, or was not wearing such a 287
device as properly adjusted, then, consistent with the Rules of 288
Evidence, the fact that the occupant was not wearing the available 289
occupant restraining device, was not wearing all of the available 290
elements of such a device, or was not wearing such a device as 291
properly adjusted is admissible in evidence in relation to any 292
claim for relief in a tort action to the extent that the claim for 293
relief satisfies all of the following: 294

(a) It seeks to recover damages for injury or death to the 295
occupant. 296

(b) The defendant in question is the manufacturer, designer, 297
distributor, or seller of the passenger car. 298

(c) The claim for relief against the defendant in question is 299
that the injury or death sustained by the occupant was enhanced or 300

aggravated by some design defect in the passenger car or that the 301
passenger car was not crashworthy. 302

(G)(1) Whoever violates division (B)(1) of this section shall 303
be fined thirty dollars. 304

(2) Whoever violates division (B)(3) of this section shall be 305
fined twenty dollars. 306

(3) Except as otherwise provided in this division, whoever 307
violates division (B)(4) of this section is guilty of a minor 308
misdemeanor. If the offender previously has been convicted of or 309
pleaded guilty to a violation of division (B)(4) of this section, 310
whoever violates division (B)(4) of this section is guilty of a 311
misdemeanor of the third degree. 312

Section 2. That existing sections 4511.093, 4511.81, and 313
4513.263 of the Revised Code are hereby repealed. 314