

As Passed by the House

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Am. H. B. No. 480

Representative Pelanda

**Cosponsors: Representatives Hackett, Butler, Celebrezze, Barborak, Brown,
Buchy, Carney, Clyde, Perales, Phillips, Stinziano**

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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 restrict to cases of negligent 2
vehicular homicide a provision of law that 3
declares that the failure of an operator of a 4
motor vehicle to secure a child in a car seat, in 5
a booster seat, or with a seat belt is 6
inadmissible as evidence in certain criminal 7
actions and to allow the enforcement of child car 8
seat, booster seat, and seat belt requirements as 9
a primary offense if the child is less than eight 10
years of age. 11

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

Section 1. That sections 4511.093, 4511.81, and 4513.263 of 12
the Revised Code be amended to read as follows: 13

Sec. 4511.093. (A)(1) No law enforcement officer who stops 14
the operator of a motor vehicle in the course of an authorized 15
sobriety or other motor vehicle checkpoint operation or a motor 16
vehicle safety inspection shall issue a ticket, citation, or 17
summons for a secondary traffic offense unless in the course of 18

the checkpoint operation or safety inspection the officer first 19
determines that an offense other than a secondary traffic offense 20
has occurred and either places the operator or a vehicle occupant 21
under arrest or issues a ticket, citation, or summons to the 22
operator or a vehicle occupant for an offense other than a 23
secondary offense. 24

(2) A law enforcement agency that operates a motor vehicle 25
checkpoint for an express purpose related to a secondary traffic 26
offense shall not issue a ticket, citation, or summons for any 27
secondary traffic offense at such a checkpoint, but may use such a 28
checkpoint operation to conduct a public awareness campaign and 29
distribute information. 30

(B) As used in this section, "secondary traffic offense" 31
means a violation of division (A) or (F)(2) of section 4507.05, 32
division (B)(1)(a) or (b) or (E) of section 4507.071, division (A) 33
of section 4511.204, division ~~(C)~~ or (D) of section 4511.81, 34
division (A)(3) of section 4513.03, or division (B) of section 35
4513.263 of the Revised Code. 36

Sec. 4511.81. (A) When any child who is in either or both of 37
the following categories is being transported in a motor vehicle, 38
other than a taxicab or public safety vehicle as defined in 39
section 4511.01 of the Revised Code, that is required by the 40
United States department of transportation to be equipped with 41
seat belts at the time of manufacture or assembly, the operator of 42
the motor vehicle shall have the child properly secured in 43
accordance with the manufacturer's instructions in a child 44
restraint system that meets federal motor vehicle safety 45
standards: 46

(1) A child who is less than four years of age; 47

(2) A child who weighs less than forty pounds. 48

(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 or day-care center, 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.

(C) When any child who is less than eight years of age and less than four feet nine inches in height, who is not required by division (A) or (B) of this section to be secured in a child restraint system, 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 or a vehicle that is regulated under section 5104.015 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 on a booster seat that meets federal motor vehicle safety standards.

(D) When any child who is at least eight years of age but not older than fifteen years of age, and who is not otherwise required by division (A), (B), or (C) of this section to be secured in a child restraint system or booster seat, 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 restrained either in accordance with the manufacturer's instructions in a child restraint system that meets federal motor

vehicle safety standards or in an occupant restraining device as 81
defined in section 4513.263 of the Revised Code. 82

(E) Notwithstanding any provision of law to the contrary, no 83
law enforcement officer shall cause an operator of a motor vehicle 84
being operated on any street or highway to stop the motor vehicle 85
for the sole purpose of determining whether a violation of 86
division ~~(C) or~~ (D) of this section has been or is being committed 87
or for the sole purpose of issuing a ticket, citation, or summons 88
for a violation of division ~~(C) or~~ (D) of this section or causing 89
the arrest of or commencing a prosecution of a person for a 90
violation of division ~~(C) or~~ (D) of this section, and absent 91
another violation of law, a law enforcement officer's view of the 92
interior or visual inspection of a motor vehicle being operated on 93
any street or highway may not be used for the purpose of 94
determining whether a violation of division ~~(C) or~~ (D) of this 95
section has been or is being committed. 96

(F) The director of public safety shall adopt such rules as 97
are necessary to carry out this section. 98

(G) The failure of an operator of a motor vehicle to secure a 99
child in a child restraint system, a booster seat, or an occupant 100
restraining device as required by this section is not negligence 101
imputable to the child, is not admissible as evidence in any civil 102
action involving the rights of the child against any other person 103
allegedly liable for injuries to the child, is not to be used as a 104
basis for a criminal prosecution of the operator of the motor 105
vehicle ~~other than a prosecution~~ for a violation of this division 106
(A)(3)(a) of section 2903.06 of the Revised Code, and is not 107
admissible as evidence in ~~any~~ a criminal action involving the 108
operator of the motor vehicle ~~other than a prosecution~~ for a 109
violation of this division (A)(3)(a) of section 2903.06 of the 110
Revised Code. 111

(H) This section does not apply when an emergency exists that 112

threatens the life of any person operating or occupying a motor 113
vehicle that is being used to transport a child who otherwise 114
would be required to be restrained under this section. This 115
section does not apply to a person operating a motor vehicle who 116
has an affidavit signed by a physician licensed to practice in 117
this state under Chapter 4731. of the Revised Code or a 118
chiropractor licensed to practice in this state under Chapter 119
4734. of the Revised Code that states that the child who otherwise 120
would be required to be restrained under this section has a 121
physical impairment that makes use of a child restraint system, 122
booster seat, or an occupant restraining device impossible or 123
impractical, provided that the person operating the vehicle has 124
safely and appropriately restrained the child in accordance with 125
any recommendations of the physician or chiropractor as noted on 126
the affidavit. 127

(I) There is hereby created in the state treasury the child 128
highway safety fund, consisting of fines imposed pursuant to 129
division (K)(1) of this section for violations of divisions (A), 130
(B), (C), and (D) of this section. The money in the fund shall be 131
used by the department of health only to defray the cost of 132
designating hospitals as pediatric trauma centers under section 133
3727.081 of the Revised Code and to establish and administer a 134
child highway safety program. The purpose of the program shall be 135
to educate the public about child restraint systems and booster 136
seats and the importance of their proper use. The program also 137
shall include a process for providing child restraint systems and 138
booster seats to persons who meet the eligibility criteria 139
established by the department, and a toll-free telephone number 140
the public may utilize to obtain information about child restraint 141
systems and booster seats, and their proper use. 142

(J) The director of health, in accordance with Chapter 119. 143
of the Revised Code, shall adopt any rules necessary to carry out 144

this section, including rules establishing the criteria a person 145
must meet in order to receive a child restraint system or booster 146
seat under the department's child highway safety program; provided 147
that rules relating to the verification of pediatric trauma 148
centers shall not be adopted under this section. 149

(K) Nothing in this section shall be construed to require any 150
person to carry with the person the birth certificate of a child 151
to prove the age of the child, but the production of a valid birth 152
certificate for a child showing that the child was not of an age 153
to which this section applies is a defense against any ticket, 154
citation, or summons issued for violating this section. 155

(L)(1) Whoever violates division (A), (B), (C), or (D) of 156
this section shall be punished as follows, provided that the 157
failure of an operator of a motor vehicle to secure more than one 158
child in a child restraint system, booster seat, or occupant 159
restraining device as required by this section that occurred at 160
the same time, on the same day, and at the same location is deemed 161
to be a single violation of this section: 162

(a) Except as otherwise provided in division (L)(1)(b) of 163
this section, the offender is guilty of a minor misdemeanor and 164
shall be fined not less than twenty-five dollars nor more than 165
seventy-five dollars. 166

(b) If the offender previously has been convicted of or 167
pleaded guilty to a violation of division (A), (B), (C), or (D) of 168
this section or of a municipal ordinance that is substantially 169
similar to any of those divisions, the offender is guilty of a 170
misdemeanor of the fourth degree. 171

(2) All fines imposed pursuant to division (L)(1) of this 172
section shall be forwarded to the treasurer of state for deposit 173
in the child highway safety fund created by division (I) of this 174
section. 175

Sec. 4513.263. (A) As used in this section and in section	176
4513.99 of the Revised Code:	177
(1) "Automobile" means any commercial tractor, passenger car,	178
commercial car, or truck that is required to be factory-equipped	179
with an occupant restraining device for the operator or any	180
passenger by regulations adopted by the United States secretary of	181
transportation pursuant to the "National Traffic and Motor Vehicle	182
Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392.	183
(2) "Occupant restraining device" means a seat safety belt,	184
shoulder belt, harness, or other safety device for restraining a	185
person who is an operator of or passenger in an automobile and	186
that satisfies the minimum federal vehicle safety standards	187
established by the United States department of transportation.	188
(3) "Passenger" means any person in an automobile, other than	189
its operator, who is occupying a seating position for which an	190
occupant restraining device is provided.	191
(4) "Commercial tractor," "passenger car," and "commercial	192
car" have the same meanings as in section 4501.01 of the Revised	193
Code.	194
(5) "Vehicle" and "motor vehicle," as used in the definitions	195
of the terms set forth in division (A)(4) of this section, have	196
the same meanings as in section 4511.01 of the Revised Code.	197
(6) "Tort action" means a civil action for damages for	198
injury, death, or loss to person or property. "Tort action"	199
includes a product liability claim, as defined in section 2307.71	200
of the Revised Code, and an asbestos claim, as defined in section	201
2307.91 of the Revised Code, but does not include a civil action	202
for damages for breach of contract or another agreement between	203
persons.	204
(B) No person shall do any of the following:	205

(1) Operate an automobile on any street or highway unless 206
that person is wearing all of the available elements of a properly 207
adjusted occupant restraining device, or operate a school bus that 208
has an occupant restraining device installed for use in its 209
operator's seat unless that person is wearing all of the available 210
elements of the device, as properly adjusted; 211

(2) Operate an automobile on any street or highway unless 212
each passenger in the automobile who is subject to the requirement 213
set forth in division (B)(3) of this section is wearing all of the 214
available elements of a properly adjusted occupant restraining 215
device; 216

(3) Occupy, as a passenger, a seating position on the front 217
seat of an automobile being operated on any street or highway 218
unless that person is wearing all of the available elements of a 219
properly adjusted occupant restraining device; 220

(4) Operate a taxicab on any street or highway unless all 221
factory-equipped occupant restraining devices in the taxicab are 222
maintained in usable form. 223

(C) Division (B)(3) of this section does not apply to a 224
person who is required by section 4511.81 of the Revised Code to 225
be secured in a child restraint device or booster seat. Division 226
(B)(1) of this section does not apply to a person who is an 227
employee of the United States postal service or of a newspaper 228
home delivery service, during any period in which the person is 229
engaged in the operation of an automobile to deliver mail or 230
newspapers to addressees. Divisions (B)(1) and (3) of this section 231
do not apply to a person who has an affidavit signed by a 232
physician licensed to practice in this state under Chapter 4731. 233
of the Revised Code or a chiropractor licensed to practice in this 234
state under Chapter 4734. of the Revised Code that states that the 235
person has a physical impairment that makes use of an occupant 236
restraining device impossible or impractical. 237

(D) ~~Notwithstanding~~ (1) Except as provided in division (D)(2) 238
of this section and notwithstanding any provision of law to the 239
contrary, no law enforcement officer shall cause an operator of an 240
automobile being operated on any street or highway to stop the 241
automobile for the sole purpose of determining whether a violation 242
of division (B) of this section has been or is being committed or 243
for the sole purpose of issuing a ticket, citation, or summons for 244
a violation of that nature or causing the arrest of or commencing 245
a prosecution of a person for a violation of that nature, and no 246
law enforcement officer shall view the interior or visually 247
inspect any automobile being operated on any street or highway for 248
the sole purpose of determining whether a violation of that nature 249
has been or is being committed. 250

(2) Division (D)(1) of this section does not apply to a law 251
enforcement officer who is enforcing division (A), (B), or (C) of 252
section 4511.81 of the Revised Code. 253

(E) All fines collected for violations of division (B) of 254
this section, or for violations of any ordinance or resolution of 255
a political subdivision that is substantively comparable to that 256
division, shall be forwarded to the treasurer of state for deposit 257
into the state treasury to the credit of the trauma and emergency 258
medical services fund, which is hereby created. In addition, sixty 259
cents of each fee collected under sections 4501.34, 4503.26, 260
4505.14, 4506.08, 4509.05, and 4519.63 of the Revised Code as 261
specified in those sections, plus the portion of the driver's 262
license reinstatement fee described in division (F)(2)(g) of 263
section 4511.191 of the Revised Code, plus all fees collected 264
under section 4765.11 of the Revised Code, plus all fines imposed 265
under section 4765.55 of the Revised Code, plus the fees and other 266
moneys specified in section 4766.05 of the Revised Code, and plus 267
five per cent of fines and moneys arising from bail forfeitures as 268
directed by section 5503.04 of the Revised Code, also shall be 269

deposited into the trauma and emergency medical services fund. All 270
money deposited into the trauma and emergency medical services 271
fund shall be used by the department of public safety for the 272
administration and operation of the division of emergency medical 273
services and the state board of emergency medical, fire, and 274
transportation services, and by the state board of emergency 275
medical, fire, and transportation services to make grants, in 276
accordance with section 4765.07 of the Revised Code and rules the 277
board adopts under section 4765.11 of the Revised Code. The 278
director of budget and management may transfer excess money from 279
the trauma and emergency medical services fund to the state 280
highway safety fund if the director of public safety determines 281
that the amount of money in the trauma and emergency medical 282
services fund exceeds the amount required to cover such costs 283
incurred by the emergency medical services agency and the grants 284
made by the state board of emergency medical, fire, and 285
transportation services and requests the director of budget and 286
management to make the transfer. 287

(F)(1) Subject to division (F)(2) of this section, the 288
failure of a person to wear all of the available elements of a 289
properly adjusted occupant restraining device in violation of 290
division (B)(1) or (3) of this section or the failure of a person 291
to ensure that each minor who is a passenger of an automobile 292
being operated by that person is wearing all of the available 293
elements of a properly adjusted occupant restraining device in 294
violation of division (B)(2) of this section shall not be 295
considered or used by the trier of fact in a tort action as 296
evidence of negligence or contributory negligence. But, the trier 297
of fact may determine based on evidence admitted consistent with 298
the Ohio Rules of Evidence that the failure contributed to the 299
harm alleged in the tort action and may diminish a recovery of 300
compensatory damages that represents noneconomic loss, as defined 301
in section 2307.011 of the Revised Code, in a tort action that 302

could have been recovered but for the plaintiff's failure to wear 303
all of the available elements of a properly adjusted occupant 304
restraining device. Evidence of that failure shall not be used as 305
a basis for a criminal prosecution of the person other than a 306
prosecution for a violation of this section; and shall not be 307
admissible as evidence in a criminal action involving the person 308
other than a prosecution for a violation of this section. 309

(2) If, at the time of an accident involving a passenger car 310
equipped with occupant restraining devices, any occupant of the 311
passenger car who sustained injury or death was not wearing an 312
available occupant restraining device, was not wearing all of the 313
available elements of such a device, or was not wearing such a 314
device as properly adjusted, then, consistent with the Rules of 315
Evidence, the fact that the occupant was not wearing the available 316
occupant restraining device, was not wearing all of the available 317
elements of such a device, or was not wearing such a device as 318
properly adjusted is admissible in evidence in relation to any 319
claim for relief in a tort action to the extent that the claim for 320
relief satisfies all of the following: 321

(a) It seeks to recover damages for injury or death to the 322
occupant. 323

(b) The defendant in question is the manufacturer, designer, 324
distributor, or seller of the passenger car. 325

(c) The claim for relief against the defendant in question is 326
that the injury or death sustained by the occupant was enhanced or 327
aggravated by some design defect in the passenger car or that the 328
passenger car was not crashworthy. 329

(G)(1) Whoever violates division (B)(1) of this section shall 330
be fined thirty dollars. 331

(2) Whoever violates division (B)(3) of this section shall be 332
fined twenty dollars. 333

(3) Except as otherwise provided in this division, whoever 334
violates division (B)(4) of this section is guilty of a minor 335
misdemeanor. If the offender previously has been convicted of or 336
pleaded guilty to a violation of division (B)(4) of this section, 337
whoever violates division (B)(4) of this section is guilty of a 338
misdemeanor of the third degree. 339

Section 2. That existing sections 4511.093, 4511.81, and 340
4513.263 of the Revised Code are hereby repealed. 341