

**As Reported by the House Judiciary Committee**

**130th General Assembly**

**Regular Session**

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**Am. H. B. No. 480**

**Representative Pelanda**

**Cosponsors: Representatives Hackett, Butler, Celebrezze**

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

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

**Section 1.** That sections 4511.093, 4511.81, and 4513.263 of 11  
the Revised Code be amended to read as follows: 12

**Sec. 4511.093.** (A)(1) No law enforcement officer who stops 13  
the operator of a motor vehicle in the course of an authorized 14  
sobriety or other motor vehicle checkpoint operation or a motor 15  
vehicle safety inspection shall issue a ticket, citation, or 16  
summons for a secondary traffic offense unless in the course of 17  
the checkpoint operation or safety inspection the officer first 18  
determines that an offense other than a secondary traffic offense 19

has occurred and either places the operator or a vehicle occupant 20  
under arrest or issues a ticket, citation, or summons to the 21  
operator or a vehicle occupant for an offense other than a 22  
secondary offense. 23

(2) A law enforcement agency that operates a motor vehicle 24  
checkpoint for an express purpose related to a secondary traffic 25  
offense shall not issue a ticket, citation, or summons for any 26  
secondary traffic offense at such a checkpoint, but may use such a 27  
checkpoint operation to conduct a public awareness campaign and 28  
distribute information. 29

(B) As used in this section, "secondary traffic offense" 30  
means a violation of division (A) or (F)(2) of section 4507.05, 31  
division (B)(1)(a) or (b) or (E) of section 4507.071, division (A) 32  
of section 4511.204, division ~~(C) or~~ (D) of section 4511.81, 33  
division (A)(3) of section 4513.03, or division (B) of section 34  
4513.263 of the Revised Code. 35

**Sec. 4511.81.** (A) When any child who is in either or both of 36  
the following categories is being transported in a motor vehicle, 37  
other than a taxicab or public safety vehicle as defined in 38  
section 4511.01 of the Revised Code, that is required by the 39  
United States department of transportation to be equipped with 40  
seat belts at the time of manufacture or assembly, the operator of 41  
the motor vehicle shall have the child properly secured in 42  
accordance with the manufacturer's instructions in a child 43  
restraint system that meets federal motor vehicle safety 44  
standards: 45

(1) A child who is less than four years of age; 46

(2) A child who weighs less than forty pounds. 47

(B) When any child who is in either or both of the following 48  
categories is being transported in a motor vehicle, other than a 49

taxicab, that is owned, leased, or otherwise under the control of 50  
a nursery school or day-care center, the operator of the motor 51  
vehicle shall have the child properly secured in accordance with 52  
the manufacturer's instructions in a child restraint system that 53  
meets federal motor vehicle safety standards: 54

(1) A child who is less than four years of age; 55

(2) A child who weighs less than forty pounds. 56

(C) When any child who is less than eight years of age and 57  
less than four feet nine inches in height, who is not required by 58  
division (A) or (B) of this section to be secured in a child 59  
restraint system, is being transported in a motor vehicle, other 60  
than a taxicab or public safety vehicle as defined in section 61  
4511.01 of the Revised Code or a vehicle that is regulated under 62  
section 5104.015 of the Revised Code, that is required by the 63  
United States department of transportation to be equipped with 64  
seat belts at the time of manufacture or assembly, the operator of 65  
the motor vehicle shall have the child properly secured in 66  
accordance with the manufacturer's instructions on a booster seat 67  
that meets federal motor vehicle safety standards. 68

(D) When any child who is at least eight years of age but not 69  
older than fifteen years of age, and who is not otherwise required 70  
by division (A), (B), or (C) of this section to be secured in a 71  
child restraint system or booster seat, is being transported in a 72  
motor vehicle, other than a taxicab or public safety vehicle as 73  
defined in section 4511.01 of the Revised Code, that is required 74  
by the United States department of transportation to be equipped 75  
with seat belts at the time of manufacture or assembly, the 76  
operator of the motor vehicle shall have the child properly 77  
restrained either in accordance with the manufacturer's 78  
instructions in a child restraint system that meets federal motor 79  
vehicle safety standards or in an occupant restraining device as 80  
defined in section 4513.263 of the Revised Code. 81

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

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

(G) The failure of an operator of a motor vehicle to secure a child in a child restraint system, a booster seat, or an occupant restraining device as required by this section is not negligence imputable to the child, is not admissible as evidence in any civil action involving the rights of the child against any other person allegedly liable for injuries to the child, is not to be used as a basis for a criminal prosecution of the operator of the motor vehicle ~~other than a prosecution~~ for a violation of ~~this~~ section 2903.06 of the Revised Code, and is not admissible as evidence in ~~any~~ a criminal action involving the operator of the motor vehicle ~~other than a prosecution~~ for a violation of ~~this~~ section 2903.06 of the Revised Code.

(H) This section does not apply when an emergency exists that threatens the life of any person operating or occupying a motor vehicle that is being used to transport a child who otherwise would be required to be restrained under this section. This

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

(I) There is hereby created in the state treasury the child 126  
highway safety fund, consisting of fines imposed pursuant to 127  
division (K)(1) of this section for violations of divisions (A), 128  
(B), (C), and (D) of this section. The money in the fund shall be 129  
used by the department of health only to defray the cost of 130  
designating hospitals as pediatric trauma centers under section 131  
3727.081 of the Revised Code and to establish and administer a 132  
child highway safety program. The purpose of the program shall be 133  
to educate the public about child restraint systems and booster 134  
seats and the importance of their proper use. The program also 135  
shall include a process for providing child restraint systems and 136  
booster seats to persons who meet the eligibility criteria 137  
established by the department, and a toll-free telephone number 138  
the public may utilize to obtain information about child restraint 139  
systems and booster seats, and their proper use. 140

(J) The director of health, in accordance with Chapter 119. 141  
of the Revised Code, shall adopt any rules necessary to carry out 142  
this section, including rules establishing the criteria a person 143  
must meet in order to receive a child restraint system or booster 144  
seat under the department's child highway safety program; provided 145

that rules relating to the verification of pediatric trauma 146  
centers shall not be adopted under this section. 147

(K) Nothing in this section shall be construed to require any 148  
person to carry with the person the birth certificate of a child 149  
to prove the age of the child, but the production of a valid birth 150  
certificate for a child showing that the child was not of an age 151  
to which this section applies is a defense against any ticket, 152  
citation, or summons issued for violating this section. 153

(L)(1) Whoever violates division (A), (B), (C), or (D) of 154  
this section shall be punished as follows, provided that the 155  
failure of an operator of a motor vehicle to secure more than one 156  
child in a child restraint system, booster seat, or occupant 157  
restraining device as required by this section that occurred at 158  
the same time, on the same day, and at the same location is deemed 159  
to be a single violation of this section: 160

(a) Except as otherwise provided in division (L)(1)(b) of 161  
this section, the offender is guilty of a minor misdemeanor and 162  
shall be fined not less than twenty-five dollars nor more than 163  
seventy-five dollars. 164

(b) If the offender previously has been convicted of or 165  
pleaded guilty to a violation of division (A), (B), (C), or (D) of 166  
this section or of a municipal ordinance that is substantially 167  
similar to any of those divisions, the offender is guilty of a 168  
misdemeanor of the fourth degree. 169

(2) All fines imposed pursuant to division (L)(1) of this 170  
section shall be forwarded to the treasurer of state for deposit 171  
in the child highway safety fund created by division (I) of this 172  
section. 173

**Sec. 4513.263.** (A) As used in this section and in section 174  
4513.99 of the Revised Code: 175

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

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

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

(4) "Commercial tractor," "passenger car," and "commercial car" have the same meanings as in section 4501.01 of the Revised Code.

(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.

(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.

(B) No person shall do any of the following:

(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;

(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;

(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;

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

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

(D) ~~Notwithstanding~~ (1) Except as provided in division (D)(2) of this section and notwithstanding any provision of law to the



contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (B) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

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

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

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

(F)(1) Subject to division (F)(2) of this section, the 286  
failure of a person to wear all of the available elements of a 287  
properly adjusted occupant restraining device in violation of 288  
division (B)(1) or (3) of this section or the failure of a person 289  
to ensure that each minor who is a passenger of an automobile 290  
being operated by that person is wearing all of the available 291  
elements of a properly adjusted occupant restraining device in 292  
violation of division (B)(2) of this section shall not be 293  
considered or used by the trier of fact in a tort action as 294  
evidence of negligence or contributory negligence. But, the trier 295  
of fact may determine based on evidence admitted consistent with 296  
the Ohio Rules of Evidence that the failure contributed to the 297  
harm alleged in the tort action and may diminish a recovery of 298  
compensatory damages that represents noneconomic loss, as defined 299  
in section 2307.011 of the Revised Code, in a tort action that 300  
could have been recovered but for the plaintiff's failure to wear 301  
all of the available elements of a properly adjusted occupant 302

restraining device. Evidence of that failure shall not be used as 303  
a basis for a criminal prosecution of the person other than a 304  
prosecution for a violation of this section; and shall not be 305  
admissible as evidence in a criminal action involving the person 306  
other than a prosecution for a violation of this section. 307

(2) If, at the time of an accident involving a passenger car 308  
equipped with occupant restraining devices, any occupant of the 309  
passenger car who sustained injury or death was not wearing an 310  
available occupant restraining device, was not wearing all of the 311  
available elements of such a device, or was not wearing such a 312  
device as properly adjusted, then, consistent with the Rules of 313  
Evidence, the fact that the occupant was not wearing the available 314  
occupant restraining device, was not wearing all of the available 315  
elements of such a device, or was not wearing such a device as 316  
properly adjusted is admissible in evidence in relation to any 317  
claim for relief in a tort action to the extent that the claim for 318  
relief satisfies all of the following: 319

(a) It seeks to recover damages for injury or death to the 320  
occupant. 321

(b) The defendant in question is the manufacturer, designer, 322  
distributor, or seller of the passenger car. 323

(c) The claim for relief against the defendant in question is 324  
that the injury or death sustained by the occupant was enhanced or 325  
aggravated by some design defect in the passenger car or that the 326  
passenger car was not crashworthy. 327

(G)(1) Whoever violates division (B)(1) of this section shall 328  
be fined thirty dollars. 329

(2) Whoever violates division (B)(3) of this section shall be 330  
fined twenty dollars. 331

(3) Except as otherwise provided in this division, whoever 332  
violates division (B)(4) of this section is guilty of a minor 333

misdemeanor. If the offender previously has been convicted of or 334  
pleaded guilty to a violation of division (B)(4) of this section, 335  
whoever violates division (B)(4) of this section is guilty of a 336  
misdemeanor of the third degree. 337

**Section 2.** That existing sections 4511.093, 4511.81, and 338  
4513.263 of the Revised Code are hereby repealed. 339