

As Introduced

**130th General Assembly
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S. B. No. 302

Senator Schiavoni

Cosponsor: Senator Lehner

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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 allow the enforcement of child 2
car seat, booster seat, and seat belt requirements 3
as a primary offense and to repeal a provision of 4
law that declares that the failure of an operator 5
of a motor vehicle to secure a child in a car 6
seat, in a booster seat, or with a seatbelt is 7
inadmissible in certain civil and criminal 8
proceedings. 9

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

Section 1. That sections 4511.093, 4511.81, and 4513.263 of 10
the Revised Code be amended to read as follows: 11

Sec. 4511.093. (A)(1) No law enforcement officer who stops 12
the operator of a motor vehicle in the course of an authorized 13
sobriety or other motor vehicle checkpoint operation or a motor 14
vehicle safety inspection shall issue a ticket, citation, or 15
summons for a secondary traffic offense unless in the course of 16
the checkpoint operation or safety inspection the officer first 17
determines that an offense other than a secondary traffic offense 18
has occurred and either places the operator or a vehicle occupant 19

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 (A) of section 4511.204, ~~division (C) or (D) of section 4511.81,~~ division (A)(3) of section 4513.03, 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 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 defined in section 4513.263 of the Revised Code.

~~(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, and is not admissible as evidence in any criminal action involving the operator of the motor vehicle other than a prosecution for a violation of this section.~~

~~(H)~~(F) 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 has an affidavit signed by a physician licensed to practice in 113
this state under Chapter 4731. of the Revised Code or a 114
chiropractor licensed to practice in this state under Chapter 115
4734. of the Revised Code that states that the child who otherwise 116
would be required to be restrained under this section has a 117
physical impairment that makes use of a child restraint system, 118
booster seat, or an occupant restraining device impossible or 119
impractical, provided that the person operating the vehicle has 120
safely and appropriately restrained the child in accordance with 121
any recommendations of the physician or chiropractor as noted on 122
the affidavit. 123

~~(I)~~(G) There is hereby created in the state treasury the 124
child highway safety fund, consisting of fines imposed pursuant to 125
division ~~(K)~~(J)(1) of this section for violations of divisions 126
(A), (B), (C), and (D) of this section. The money in the fund 127
shall be used by the department of health only to defray the cost 128
of designating hospitals as pediatric trauma centers under section 129
3727.081 of the Revised Code and to establish and administer a 130
child highway safety program. The purpose of the program shall be 131
to educate the public about child restraint systems and booster 132
seats and the importance of their proper use. The program also 133
shall include a process for providing child restraint systems and 134
booster seats to persons who meet the eligibility criteria 135
established by the department, and a toll-free telephone number 136
the public may utilize to obtain information about child restraint 137
systems and booster seats, and their proper use. 138

~~(J)~~(H) The director of health, in accordance with Chapter 139
119. of the Revised Code, shall adopt any rules necessary to carry 140
out this section, including rules establishing the criteria a 141
person must meet in order to receive a child restraint system or 142
booster seat under the department's child highway safety program; 143
provided that rules relating to the verification of pediatric 144

trauma centers shall not be adopted under this section. 145

~~(K)~~(I) Nothing in this section shall be construed to require 146
any person to carry with the person the birth certificate of a 147
child to prove the age of the child, but the production of a valid 148
birth certificate for a child showing that the child was not of an 149
age to which this section applies is a defense against any ticket, 150
citation, or summons issued for violating this section. 151

~~(L)~~(J)(1) Whoever violates division (A), (B), (C), or (D) of 152
this section shall be punished as follows, provided that the 153
failure of an operator of a motor vehicle to secure more than one 154
child in a child restraint system, booster seat, or occupant 155
restraining device as required by this section that occurred at 156
the same time, on the same day, and at the same location is deemed 157
to be a single violation of this section: 158

(a) Except as otherwise provided in division ~~(L)~~(J)(1)(b) of 159
this section, the offender is guilty of a minor misdemeanor and 160
shall be fined not less than twenty-five dollars nor more than 161
seventy-five dollars. 162

(b) If the offender previously has been convicted of or 163
pleaded guilty to a violation of division (A), (B), (C), or (D) of 164
this section or of a municipal ordinance that is substantially 165
similar to any of those divisions, the offender is guilty of a 166
misdemeanor of the fourth degree. 167

(2) All fines imposed pursuant to division ~~(L)~~(J)(1) of this 168
section shall be forwarded to the treasurer of state for deposit 169
in the child highway safety fund created by division ~~(I)~~(G) of 170
this section. 171

Sec. 4513.263. (A) As used in this section and in section 172
4513.99 of the Revised Code: 173

(1) "Automobile" means any commercial tractor, passenger car, 174

commercial car, or truck that is required to be factory-equipped 175
with an occupant restraining device for the operator or any 176
passenger by regulations adopted by the United States secretary of 177
transportation pursuant to the "National Traffic and Motor Vehicle 178
Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 1392. 179

(2) "Occupant restraining device" means a seat safety belt, 180
shoulder belt, harness, or other safety device for restraining a 181
person who is an operator of or passenger in an automobile and 182
that satisfies the minimum federal vehicle safety standards 183
established by the United States department of transportation. 184

(3) "Passenger" means any person in an automobile, other than 185
its operator, who is occupying a seating position for which an 186
occupant restraining device is provided. 187

(4) "Commercial tractor," "passenger car," and "commercial 188
car" have the same meanings as in section 4501.01 of the Revised 189
Code. 190

(5) "Vehicle" and "motor vehicle," as used in the definitions 191
of the terms set forth in division (A)(4) of this section, have 192
the same meanings as in section 4511.01 of the Revised Code. 193

(6) "Tort action" means a civil action for damages for 194
injury, death, or loss to person or property. "Tort action" 195
includes a product liability claim, as defined in section 2307.71 196
of the Revised Code, and an asbestos claim, as defined in section 197
2307.91 of the Revised Code, but does not include a civil action 198
for damages for breach of contract or another agreement between 199
persons. 200

(B) No person shall do any of the following: 201

(1) Operate an automobile on any street or highway unless 202
that person is wearing all of the available elements of a properly 203
adjusted occupant restraining device, or operate a school bus that 204
has an occupant restraining device installed for use in its 205

operator's seat unless that person is wearing all of the available 206
elements of the device, as properly adjusted; 207

(2) Operate an automobile on any street or highway unless 208
each passenger in the automobile who is subject to the requirement 209
set forth in division (B)(3) of this section is wearing all of the 210
available elements of a properly adjusted occupant restraining 211
device; 212

(3) Occupy, as a passenger, a seating position on the front 213
seat of an automobile being operated on any street or highway 214
unless that person is wearing all of the available elements of a 215
properly adjusted occupant restraining device; 216

(4) Operate a taxicab on any street or highway unless all 217
factory-equipped occupant restraining devices in the taxicab are 218
maintained in usable form. 219

(C) Division (B)(3) of this section does not apply to a 220
person who is required by section 4511.81 of the Revised Code to 221
be secured in a child restraint device or booster seat. Division 222
(B)(1) of this section does not apply to a person who is an 223
employee of the United States postal service or of a newspaper 224
home delivery service, during any period in which the person is 225
engaged in the operation of an automobile to deliver mail or 226
newspapers to addressees. Divisions (B)(1) and (3) of this section 227
do not apply to a person who has an affidavit signed by a 228
physician licensed to practice in this state under Chapter 4731. 229
of the Revised Code or a chiropractor licensed to practice in this 230
state under Chapter 4734. of the Revised Code that states that the 231
person has a physical impairment that makes use of an occupant 232
restraining device impossible or impractical. 233

(D) ~~Notwithstanding~~ (1) Except as provided in division (D)(2) 234
of this section and notwithstanding any provision of law to the 235
contrary, no law enforcement officer shall cause an operator of an 236

automobile being operated on any street or highway to stop the 237
automobile for the sole purpose of determining whether a violation 238
of division (B) of this section has been or is being committed or 239
for the sole purpose of issuing a ticket, citation, or summons for 240
a violation of that nature or causing the arrest of or commencing 241
a prosecution of a person for a violation of that nature, and no 242
law enforcement officer shall view the interior or visually 243
inspect any automobile being operated on any street or highway for 244
the sole purpose of determining whether a violation of that nature 245
has been or is being committed. 246

(2) Division (D)(1) of this section does not apply to a law 247
enforcement officer who is enforcing section 4511.81 of the 248
Revised Code. 249

(E) All fines collected for violations of division (B) of 250
this section, or for violations of any ordinance or resolution of 251
a political subdivision that is substantively comparable to that 252
division, shall be forwarded to the treasurer of state for deposit 253
into the state treasury to the credit of the trauma and emergency 254
medical services fund, which is hereby created. In addition, sixty 255
cents of each fee collected under sections 4501.34, 4503.26, 256
4505.14, 4506.08, 4509.05, and 4519.63 of the Revised Code as 257
specified in those sections, plus the portion of the driver's 258
license reinstatement fee described in division (F)(2)(g) of 259
section 4511.191 of the Revised Code, plus all fees collected 260
under section 4765.11 of the Revised Code, plus all fines imposed 261
under section 4765.55 of the Revised Code, plus the fees and other 262
moneys specified in section 4766.05 of the Revised Code, and plus 263
five per cent of fines and moneys arising from bail forfeitures as 264
directed by section 5503.04 of the Revised Code, also shall be 265
deposited into the trauma and emergency medical services fund. All 266
money deposited into the trauma and emergency medical services 267
fund shall be used by the department of public safety for the 268

administration and operation of the division of emergency medical 269
services and the state board of emergency medical, fire, and 270
transportation services, and by the state board of emergency 271
medical, fire, and transportation services to make grants, in 272
accordance with section 4765.07 of the Revised Code and rules the 273
board adopts under section 4765.11 of the Revised Code. The 274
director of budget and management may transfer excess money from 275
the trauma and emergency medical services fund to the state 276
highway safety fund if the director of public safety determines 277
that the amount of money in the trauma and emergency medical 278
services fund exceeds the amount required to cover such costs 279
incurred by the emergency medical services agency and the grants 280
made by the state board of emergency medical, fire, and 281
transportation services and requests the director of budget and 282
management to make the transfer. 283

(F)(1) Subject to division (F)(2) of this section, the 284
failure of a person to wear all of the available elements of a 285
properly adjusted occupant restraining device in violation of 286
division (B)(1) or (3) of this section or the failure of a person 287
to ensure that each minor who is a passenger of an automobile 288
being operated by that person is wearing all of the available 289
elements of a properly adjusted occupant restraining device in 290
violation of division (B)(2) of this section shall not be 291
considered or used by the trier of fact in a tort action as 292
evidence of negligence or contributory negligence. But, the trier 293
of fact may determine based on evidence admitted consistent with 294
the Ohio Rules of Evidence that the failure contributed to the 295
harm alleged in the tort action and may diminish a recovery of 296
compensatory damages that represents noneconomic loss, as defined 297
in section 2307.011 of the Revised Code, in a tort action that 298
could have been recovered but for the plaintiff's failure to wear 299
all of the available elements of a properly adjusted occupant 300
restraining device. Evidence of that failure shall not be used as 301

a basis for a criminal prosecution of the person other than a 302
prosecution for a violation of this section; and shall not be 303
admissible as evidence in a criminal action involving the person 304
other than a prosecution for a violation of this section. 305

(2) If, at the time of an accident involving a passenger car 306
equipped with occupant restraining devices, any occupant of the 307
passenger car who sustained injury or death was not wearing an 308
available occupant restraining device, was not wearing all of the 309
available elements of such a device, or was not wearing such a 310
device as properly adjusted, then, consistent with the Rules of 311
Evidence, the fact that the occupant was not wearing the available 312
occupant restraining device, was not wearing all of the available 313
elements of such a device, or was not wearing such a device as 314
properly adjusted is admissible in evidence in relation to any 315
claim for relief in a tort action to the extent that the claim for 316
relief satisfies all of the following: 317

(a) It seeks to recover damages for injury or death to the 318
occupant. 319

(b) The defendant in question is the manufacturer, designer, 320
distributor, or seller of the passenger car. 321

(c) The claim for relief against the defendant in question is 322
that the injury or death sustained by the occupant was enhanced or 323
aggravated by some design defect in the passenger car or that the 324
passenger car was not crashworthy. 325

(G)(1) Whoever violates division (B)(1) of this section shall 326
be fined thirty dollars. 327

(2) Whoever violates division (B)(3) of this section shall be 328
fined twenty dollars. 329

(3) Except as otherwise provided in this division, whoever 330
violates division (B)(4) of this section is guilty of a minor 331
misdemeanor. If the offender previously has been convicted of or 332

pleaded guilty to a violation of division (B)(4) of this section, 333
whoever violates division (B)(4) of this section is guilty of a 334
misdemeanor of the third degree. 335

Section 2. That existing sections 4511.093, 4511.81, and 336
4513.263 of the Revised Code are hereby repealed. 337