

As Introduced

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Representative Pelanda

**Cosponsors: Representatives Grossman, Leland, Brown, Antonio, Phillips,
Celebrezze, Sheehy**

A BILL

To amend sections 4511.093, 4511.81, and 4513.263 1
of the Revised Code to restrict to cases of 2
negligent vehicular homicide a provision of law 3
that declares that the failure of an operator of 4
a motor vehicle to secure a child in a car seat, 5
in 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 8
car seat, booster seat, and seat belt 9
requirements as a primary offense if the child 10
is less than eight 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 12
of 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 20
offense has occurred and either places the operator or a vehicle 21
occupant under arrest or issues a ticket, citation, or summons 22
to the operator or a vehicle occupant for an offense other than 23
a 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 28
a checkpoint operation to conduct a public awareness campaign 29
and 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 33
(A) 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 37
of the following categories is being transported in a motor 38
vehicle, other than a taxicab or public safety vehicle as 39
defined in section 4511.01 of the Revised Code, that is required 40
by the United States department of transportation to be equipped 41
with seat belts at the time of manufacture or assembly, the 42
operator of the motor vehicle shall have the child properly 43
secured in accordance with the manufacturer's instructions in a 44
child 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:	49 50 51 52 53 54 55 56
(1) A child who is less than four years of age;	57
(2) A child who weighs less than forty pounds.	58
(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.	59 60 61 62 63 64 65 66 67 68 69 70
(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	71 72 73 74 75 76

Code, that is required by the United States department of 77
transportation to be equipped with seat belts at the time of 78
manufacture or assembly, the operator of the motor vehicle shall 79
have the child properly restrained either in accordance with the 80
manufacturer's instructions in a child restraint system that 81
meets federal motor vehicle safety standards or in an occupant 82
restraining device as defined in section 4513.263 of the Revised 83
Code. 84

(E) Notwithstanding any provision of law to the contrary, 85
no law enforcement officer shall cause an operator of a motor 86
vehicle being operated on any street or highway to stop the 87
motor vehicle for the sole purpose of determining whether a 88
violation of division ~~(C) or~~ (D) of this section has been or is 89
being committed or for the sole purpose of issuing a ticket, 90
citation, or summons for a violation of division ~~(C) or~~ (D) of 91
this section or causing the arrest of or commencing a 92
prosecution of a person for a violation of division ~~(C) or~~ (D) 93
of this section, and absent another violation of law, a law 94
enforcement officer's view of the interior or visual inspection 95
of a motor vehicle being operated on any street or highway may 96
not be used for the purpose of determining whether a violation 97
of division ~~(C) or~~ (D) of this section has been or is being 98
committed. 99

(F) The director of public safety shall adopt such rules 100
as are necessary to carry out this section. 101

(G) The failure of an operator of a motor vehicle to 102
secure a child in a child restraint system, a booster seat, or 103
an occupant restraining device as required by this section is 104
~~not:~~ 105

(1) Not negligence imputable to the child, ~~is not:~~ 106

(2) Not admissible as evidence in any civil action 107
involving the rights of the child against any other person 108
allegedly liable for injuries to the child, ~~is not~~; 109

(3) Not to be used as a basis for a criminal prosecution 110
of the operator of the motor vehicle ~~other than a prosecution~~ 111
for a violation of ~~this division~~ (A) (3) (a) of section 2903.06 112
of the Revised Code; and is not 113

(4) Not admissible as evidence in ~~any a~~ criminal action 114
involving the operator of the motor vehicle ~~other than a~~ 115
~~prosecution~~ for a violation of ~~this division~~ (A) (3) (a) of 116
section 2903.06 of the Revised Code. 117

(H) This section does not apply when an emergency exists 118
that threatens the life of any person operating or occupying a 119
motor vehicle that is being used to transport a child who 120
otherwise would be required to be restrained under this section. 121
This section does not apply to a person operating a motor 122
vehicle who has an affidavit signed by a physician licensed to 123
practice in this state under Chapter 4731. of the Revised Code 124
or a chiropractor licensed to practice in this state under 125
Chapter 4734. of the Revised Code that states that the child who 126
otherwise would be required to be restrained under this section 127
has a physical impairment that makes use of a child restraint 128
system, booster seat, or an occupant restraining device 129
impossible or impractical, provided that the person operating 130
the vehicle has safely and appropriately restrained the child in 131
accordance with any recommendations of the physician or 132
chiropractor as noted on the affidavit. 133

(I) There is hereby created in the state treasury the 134
child highway safety fund, consisting of fines imposed pursuant 135
to division ~~(K)~~ (L) (1) of this section for violations of 136

divisions (A), (B), (C), and (D) of this section. The money in 137
the fund shall be used by the department of health only to 138
defray the cost of designating hospitals as pediatric trauma 139
centers under section 3727.081 of the Revised Code and to 140
establish and administer a child highway safety program. The 141
purpose of the program shall be to educate the public about 142
child restraint systems and booster seats and the importance of 143
their proper use. The program also shall include a process for 144
providing child restraint systems and booster seats to persons 145
who meet the eligibility criteria established by the department, 146
and a toll-free telephone number the public may utilize to 147
obtain information about child restraint systems and booster 148
seats, and their proper use. 149

(J) The director of health, in accordance with Chapter 150
119. of the Revised Code, shall adopt any rules necessary to 151
carry out this section, including rules establishing the 152
criteria a person must meet in order to receive a child 153
restraint system or booster seat under the department's child 154
highway safety program; provided that rules relating to the 155
verification of pediatric trauma centers shall not be adopted 156
under this section. 157

(K) Nothing in this section shall be construed to require 158
any person to carry with the person the birth certificate of a 159
child to prove the age of the child, but the production of a 160
valid birth certificate for a child showing that the child was 161
not of an age to which this section applies is a defense against 162
any ticket, citation, or summons issued for violating this 163
section. 164

(L) (1) Whoever violates division (A), (B), (C), or (D) of 165
this section shall be punished as follows, provided that the 166

failure of an operator of a motor vehicle to secure more than 167
one child in a child restraint system, booster seat, or occupant 168
restraining device as required by this section that occurred at 169
the same time, on the same day, and at the same location is 170
deemed to be a single violation of this section: 171

(a) Except as otherwise provided in division (L)(1)(b) of 172
this section, the offender is guilty of a minor misdemeanor and 173
shall be fined not less than twenty-five dollars nor more than 174
seventy-five dollars. 175

(b) If the offender previously has been convicted of or 176
pleaded guilty to a violation of division (A), (B), (C), or (D) 177
of this section or of a municipal ordinance that is 178
substantially similar to any of those divisions, the offender is 179
guilty of a misdemeanor of the fourth degree. 180

(2) All fines imposed pursuant to division (L)(1) of this 181
section shall be forwarded to the treasurer of state for deposit 182
in the child highway safety fund created by division (I) of this 183
section. 184

Sec. 4513.263. (A) As used in this section and in section 185
4513.99 of the Revised Code: 186

(1) "Automobile" means any commercial tractor, passenger 187
car, commercial car, or truck that is required to be factory- 188
equipped with an occupant restraining device for the operator or 189
any passenger by regulations adopted by the United States 190
secretary of transportation pursuant to the "National Traffic 191
and Motor Vehicle Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 192
1392. 193

(2) "Occupant restraining device" means a seat safety 194
belt, shoulder belt, harness, or other safety device for 195

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 225
requirement set forth in division (B) (3) of this section is 226
wearing all of the available elements of a properly adjusted 227
occupant restraining device; 228

(3) Occupy, as a passenger, a seating position on the 229
front seat of an automobile being operated on any street or 230
highway unless that person is wearing all of the available 231
elements of a properly adjusted occupant restraining device; 232

(4) Operate a taxicab on any street or highway unless all 233
factory-equipped occupant restraining devices in the taxicab are 234
maintained in usable form. 235

(C) Division (B) (3) of this section does not apply to a 236
person who is required by section 4511.81 of the Revised Code to 237
be secured in a child restraint device or booster seat. Division 238
(B) (1) of this section does not apply to a person who is an 239
employee of the United States postal service or of a newspaper 240
home delivery service, during any period in which the person is 241
engaged in the operation of an automobile to deliver mail or 242
newspapers to addressees. Divisions (B) (1) and (3) of this 243
section do not apply to a person who has an affidavit signed by 244
a physician licensed to practice in this state under Chapter 245
4731. of the Revised Code or a chiropractor licensed to practice 246
in this state under Chapter 4734. of the Revised Code that 247
states that the person has a physical impairment that makes use 248
of an occupant restraining device impossible or impractical. 249

(D) ~~Notwithstanding~~ (1) Except as provided in division (D) 250
(2) of this section and notwithstanding any provision of law to 251
the contrary, no law enforcement officer shall cause an operator 252
of an automobile being operated on any street or highway to stop 253
the automobile for the sole purpose of determining whether a 254

violation of division (B) of this section has been or is being 255
committed or for the sole purpose of issuing a ticket, citation, 256
or summons for a violation of that nature or causing the arrest 257
of or commencing a prosecution of a person for a violation of 258
that nature, and no law enforcement officer shall view the 259
interior or visually inspect any automobile being operated on 260
any street or highway for the sole purpose of determining 261
whether a violation of that nature has been or is being 262
committed. 263

(2) Division (D) (1) of this section does not apply to a 264
law enforcement officer who is enforcing division (A), (B), or 265
(C) of section 4511.81 of the Revised Code. 266

(E) All fines collected for violations of division (B) of 267
this section, or for violations of any ordinance or resolution 268
of a political subdivision that is substantively comparable to 269
that division, shall be forwarded to the treasurer of state for 270
deposit into the state treasury to the credit of the trauma and 271
emergency medical services fund, which is hereby created. In 272
addition, sixty cents of each fee collected under sections 273
4501.34, 4503.26, 4505.14, 4506.08, 4509.05, and 4519.63 of the 274
Revised Code as specified in those sections, plus the portion of 275
the driver's license reinstatement fee described in division (F) 276
(2)(g) of section 4511.191 of the Revised Code, plus all fees 277
collected under section 4765.11 of the Revised Code, plus all 278
fines imposed under section 4765.55 of the Revised Code, plus 279
the fees and other moneys specified in section 4766.05 of the 280
Revised Code, and plus five per cent of fines and moneys arising 281
from bail forfeitures as directed by section 5503.04 of the 282
Revised Code, also shall be deposited into the trauma and 283
emergency medical services fund. All money deposited into the 284
trauma and emergency medical services fund shall be used by the 285

department of public safety for the administration and operation 286
of the division of emergency medical services and the state 287
board of emergency medical, fire, and transportation services, 288
and by the state board of emergency medical, fire, and 289
transportation services to make grants, in accordance with 290
section 4765.07 of the Revised Code and rules the board adopts 291
under section 4765.11 of the Revised Code. The director of 292
budget and management may transfer excess money from the trauma 293
and emergency medical services fund to the state highway safety 294
fund if the director of public safety determines that the amount 295
of money in the trauma and emergency medical services fund 296
exceeds the amount required to cover such costs incurred by the 297
emergency medical services agency and the grants made by the 298
state board of emergency medical, fire, and transportation 299
services and requests the director of budget and management to 300
make the transfer. 301

(F) (1) Subject to division (F) (2) of this section, the 302
failure of a person to wear all of the available elements of a 303
properly adjusted occupant restraining device in violation of 304
division (B) (1) or (3) of this section or the failure of a 305
person to ensure that each minor who is a passenger of an 306
automobile being operated by that person is wearing all of the 307
available elements of a properly adjusted occupant restraining 308
device in violation of division (B) (2) of this section shall not 309
be considered or used by the trier of fact in a tort action as 310
evidence of negligence or contributory negligence. But, the 311
trier of fact may determine based on evidence admitted 312
consistent with the Ohio Rules of Evidence that the failure 313
contributed to the harm alleged in the tort action and may 314
diminish a recovery of compensatory damages that represents 315
noneconomic loss, as defined in section 2307.011 of the Revised 316

Code, in a tort action that could have been recovered but for 317
the plaintiff's failure to wear all of the available elements of 318
a properly adjusted occupant restraining device. Evidence of 319
that failure shall not be used as a basis for a criminal 320
prosecution of the person other than a prosecution for a 321
violation of this section; and shall not be admissible as 322
evidence in a criminal action involving the person other than a 323
prosecution for a violation of this section. 324

(2) If, at the time of an accident involving a passenger 325
car equipped with occupant restraining devices, any occupant of 326
the passenger car who sustained injury or death was not wearing 327
an available occupant restraining device, was not wearing all of 328
the available elements of such a device, or was not wearing such 329
a device as properly adjusted, then, consistent with the Rules 330
of Evidence, the fact that the occupant was not wearing the 331
available occupant restraining device, was not wearing all of 332
the available elements of such a device, or was not wearing such 333
a device as properly adjusted is admissible in evidence in 334
relation to any claim for relief in a tort action to the extent 335
that the claim for relief satisfies all of the following: 336

(a) It seeks to recover damages for injury or death to the 337
occupant. 338

(b) The defendant in question is the manufacturer, 339
designer, distributor, or seller of the passenger car. 340

(c) The claim for relief against the defendant in question 341
is that the injury or death sustained by the occupant was 342
enhanced or aggravated by some design defect in the passenger 343
car or that the passenger car was not crashworthy. 344

(G) (1) Whoever violates division (B) (1) of this section 345

shall be fined thirty dollars. 346

(2) Whoever violates division (B) (3) of this section shall 347
be fined twenty dollars. 348

(3) Except as otherwise provided in this division, whoever 349
violates division (B) (4) of this section is guilty of a minor 350
misdemeanor. If the offender previously has been convicted of or 351
pleaded guilty to a violation of division (B) (4) of this 352
section, whoever violates division (B) (4) of this section is 353
guilty of a misdemeanor of the third degree. 354

Section 2. That existing sections 4511.093, 4511.81, and 355
4513.263 of the Revised Code are hereby repealed. 356