

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 44**

**Senator Schiavoni**

**Cosponsors: Senators Manning, Jones, Brown, Yuko, Tavares, Gentile**

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**A BILL**

To amend sections 4511.093, 4511.81, and 4513.263 1  
of the Revised Code to allow the enforcement of 2  
child car seat, booster seat, and seat belt 3  
requirements as a primary offense and to repeal 4  
a provision of law that declares that the 5  
failure of an operator of a motor vehicle to 6  
secure a child in a car seat, in a booster seat, 7  
or with a seat belt is inadmissible in certain 8  
criminal 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 10  
of 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 18  
offense has occurred and either places the operator or a vehicle 19

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

(2) A law enforcement agency that operates a motor vehicle 23  
checkpoint for an express purpose related to a secondary traffic 24  
offense shall not issue a ticket, citation, or summons for any 25  
secondary traffic offense at such a checkpoint, but may use such 26  
a checkpoint operation to conduct a public awareness campaign 27  
and distribute information. 28

(B) As used in this section, "secondary traffic offense" 29  
means a violation of division (A) or (F) (2) of section 4507.05, 30  
division (B) (1) (a) or (b) or (E) of section 4507.071, division 31  
(A) of section 4511.204, ~~division (C) or (D) of section 4511.81,~~ 32  
division (A) (3) of section 4513.03, or division (B) of section 33  
4513.263 of the Revised Code. 34

**Sec. 4511.81.** (A) When any child who is in either or both 35  
of the following categories is being transported in a motor 36  
vehicle, other than a taxicab or public safety vehicle as 37  
defined in section 4511.01 of the Revised Code, that is required 38  
by the United States department of transportation to be equipped 39  
with seat belts at the time of manufacture or assembly, the 40  
operator of the motor vehicle shall have the child properly 41  
secured in accordance with the manufacturer's instructions in a 42  
child restraint system that meets federal motor vehicle safety 43  
standards: 44

(1) A child who is less than four years of age; 45

(2) A child who weighs less than forty pounds. 46

(B) When any child who is in either or both of the 47  
following categories is being transported in a motor vehicle, 48

other than a taxicab, that is owned, leased, or otherwise under 49  
the control of a nursery school or day-care center, the operator 50  
of the motor vehicle shall have the child properly secured in 51  
accordance with the manufacturer's instructions in a child 52  
restraint system that meets federal motor vehicle safety 53  
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 58  
by 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 65  
of the motor vehicle shall have the child properly secured in 66  
accordance with the manufacturer's instructions on a booster 67  
seat that meets federal motor vehicle safety standards. 68

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

manufacturer's instructions in a child restraint system that 79  
meets federal motor vehicle safety standards or in an occupant 80  
restraining device as defined in section 4513.263 of the Revised 81  
Code. 82

~~(E) Notwithstanding any provision of law to the contrary, 83  
no law enforcement officer shall cause an operator of a motor- 84  
vehicle being operated on any street or highway to stop the 85  
motor vehicle for the sole purpose of determining whether a 86  
violation of division (C) or (D) of this section has been or is 87  
being committed or for the sole purpose of issuing a ticket, 88  
citation, or summons for a violation of division (C) or (D) of 89  
this section or causing the arrest of or commencing a 90  
prosecution of a person for a violation of division (C) or (D)- 91  
of this section, and absent another violation of law, a law- 92  
enforcement officer's view of the interior or visual inspection- 93  
of a motor vehicle being operated on any street or highway may 94  
not be used for the purpose of determining whether a violation 95  
of division (C) or (D) of this section has been or is being 96  
committed. 97~~

~~(F) The director of public safety shall adopt such rules 98  
as are necessary to carry out this section. 99~~

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

~~evidence in any criminal action involving the operator of the~~ 109  
~~motor vehicle other than a prosecution for a violation of this~~ 110  
~~section.~~ 111

~~(H)~~ (G) This section does not apply when an emergency 112  
exists that threatens the life of any person operating or 113  
occupying a motor vehicle that is being used to transport a 114  
child who otherwise would be required to be restrained under 115  
this section. This section does not apply to a person operating 116  
a motor vehicle who has an affidavit signed by a physician 117  
licensed to practice in this state under Chapter 4731. of the 118  
Revised Code or a chiropractor licensed to practice in this 119  
state under Chapter 4734. of the Revised Code that states that 120  
the child who otherwise would be required to be restrained under 121  
this section has a physical impairment that makes use of a child 122  
restraint system, booster seat, or an occupant restraining 123  
device impossible or impractical, provided that the person 124  
operating the vehicle has safely and appropriately restrained 125  
the child in accordance with any recommendations of the 126  
physician or chiropractor as noted on the affidavit. 127

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

the eligibility criteria established by the department, and a 140  
toll-free telephone number the public may utilize to obtain 141  
information about child restraint systems and booster seats, and 142  
their proper use. 143

~~(J)~~ (I) The director of health, in accordance with Chapter 144  
119. of the Revised Code, shall adopt any rules necessary to 145  
carry out this section, including rules establishing the 146  
criteria a person must meet in order to receive a child 147  
restraint system or booster seat under the department's child 148  
highway safety program; provided that rules relating to the 149  
verification of pediatric trauma centers shall not be adopted 150  
under this section. 151

~~(K)~~ (J) Nothing in this section shall be construed to 152  
require any person to carry with the person the birth 153  
certificate of a child to prove the age of the child, but the 154  
production of a valid birth certificate for a child showing that 155  
the child was not of an age to which this section applies is a 156  
defense against any ticket, citation, or summons issued for 157  
violating this section. 158

~~(L)~~ (K) (1) Whoever violates division (A), (B), (C), or (D) 159  
of this section shall be punished as follows, provided that the 160  
failure of an operator of a motor vehicle to secure more than 161  
one child in a child restraint system, booster seat, or occupant 162  
restraining device as required by this section that occurred at 163  
the same time, on the same day, and at the same location is 164  
deemed to be a single violation of this section: 165

(a) Except as otherwise provided in division ~~(L)~~ (K) (1) (b) 166  
of this section, the offender is guilty of a minor misdemeanor 167  
and shall be fined not less than twenty-five dollars nor more 168  
than seventy-five dollars. 169

(b) If the offender previously has been convicted of or 170  
pleaded guilty to a violation of division (A), (B), (C), or (D) 171  
of this section or of a municipal ordinance that is 172  
substantially similar to any of those divisions, the offender is 173  
guilty of a misdemeanor of the fourth degree. 174

(2) All fines imposed pursuant to division ~~(L)~~(K)(1) of 175  
this section shall be forwarded to the treasurer of state for 176  
deposit in the child highway safety fund created by division ~~(I)~~ 177  
(H) of this section. 178

**Sec. 4513.263.** (A) As used in this section and in section 179  
4513.99 of the Revised Code: 180

(1) "Automobile" means any commercial tractor, passenger 181  
car, commercial car, or truck that is required to be factory- 182  
equipped with an occupant restraining device for the operator or 183  
any passenger by regulations adopted by the United States 184  
secretary of transportation pursuant to the "National Traffic 185  
and Motor Vehicle Safety Act of 1966," 80 Stat. 719, 15 U.S.C.A. 186  
1392. 187

(2) "Occupant restraining device" means a seat safety 188  
belt, shoulder belt, harness, or other safety device for 189  
restraining a person who is an operator of or passenger in an 190  
automobile and that satisfies the minimum federal vehicle safety 191  
standards established by the United States department of 192  
transportation. 193

(3) "Passenger" means any person in an automobile, other 194  
than its operator, who is occupying a seating position for which 195  
an occupant restraining device is provided. 196

(4) "Commercial tractor," "passenger car," and "commercial 197  
car" have the same meanings as in section 4501.01 of the Revised 198

Code.	199
(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.	200 201 202 203
(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.	204 205 206 207 208 209 210
(B) No person shall do any of the following:	211
(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;	212 213 214 215 216 217
(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;	218 219 220 221 222
(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;	223 224 225 226
(4) Operate a taxicab on any street or highway unless all	227

factory-equipped occupant restraining devices in the taxicab are 228  
maintained in usable form. 229

(C) Division (B) (3) of this section does not apply to a 230  
person who is required by section 4511.81 of the Revised Code to 231  
be secured in a child restraint device or booster seat. Division 232  
(B) (1) of this section does not apply to a person who is an 233  
employee of the United States postal service or of a newspaper 234  
home delivery service, during any period in which the person is 235  
engaged in the operation of an automobile to deliver mail or 236  
newspapers to addressees. Divisions (B) (1) and (3) of this 237  
section do not apply to a person who has an affidavit signed by 238  
a physician licensed to practice in this state under Chapter 239  
4731. of the Revised Code or a chiropractor licensed to practice 240  
in this state under Chapter 4734. of the Revised Code that 241  
states that the person has a physical impairment that makes use 242  
of an occupant restraining device impossible or impractical. 243

(D) ~~Notwithstanding (1) Except as provided in division (D)~~ 244  
~~(2) of this section and notwithstanding any provision of law to~~ 245  
the contrary, no law enforcement officer shall cause an operator 246  
of an automobile being operated on any street or highway to stop 247  
the automobile for the sole purpose of determining whether a 248  
violation of division (B) of this section has been or is being 249  
committed or for the sole purpose of issuing a ticket, citation, 250  
or summons for a violation of that nature or causing the arrest 251  
of or commencing a prosecution of a person for a violation of 252  
that nature, and no law enforcement officer shall view the 253  
interior or visually inspect any automobile being operated on 254  
any street or highway for the sole purpose of determining 255  
whether a violation of that nature has been or is being 256  
committed. 257

(2) Division (D)(1) of this section does not apply to a 258  
law enforcement officer who is enforcing section 4511.81 of the 259  
Revised Code. 260

(E) All fines collected for violations of division (B) of 261  
this section, or for violations of any ordinance or resolution 262  
of a political subdivision that is substantively comparable to 263  
that division, shall be forwarded to the treasurer of state for 264  
deposit into the state treasury to the credit of the trauma and 265  
emergency medical services fund, which is hereby created. In 266  
addition, sixty cents of each fee collected under sections 267  
4501.34, 4503.26, 4505.14, 4506.08, 4509.05, and 4519.63 of the 268  
Revised Code as specified in those sections, plus the portion of 269  
the driver's license reinstatement fee described in division (F) 270  
(2)(g) of section 4511.191 of the Revised Code, plus all fees 271  
collected under section 4765.11 of the Revised Code, plus all 272  
fines imposed under section 4765.55 of the Revised Code, plus 273  
the fees and other moneys specified in section 4766.05 of the 274  
Revised Code, and plus five per cent of fines and moneys arising 275  
from bail forfeitures as directed by section 5503.04 of the 276  
Revised Code, also shall be deposited into the trauma and 277  
emergency medical services fund. All money deposited into the 278  
trauma and emergency medical services fund shall be used by the 279  
department of public safety for the administration and operation 280  
of the division of emergency medical services and the state 281  
board of emergency medical, fire, and transportation services, 282  
and by the state board of emergency medical, fire, and 283  
transportation services to make grants, in accordance with 284  
section 4765.07 of the Revised Code and rules the board adopts 285  
under section 4765.11 of the Revised Code. The director of 286  
budget and management may transfer excess money from the trauma 287  
and emergency medical services fund to the state highway safety 288

fund if the director of public safety determines that the amount 289  
of money in the trauma and emergency medical services fund 290  
exceeds the amount required to cover such costs incurred by the 291  
emergency medical services agency and the grants made by the 292  
state board of emergency medical, fire, and transportation 293  
services and requests the director of budget and management to 294  
make the transfer. 295

(F) (1) Subject to division (F) (2) of this section, the 296  
failure of a person to wear all of the available elements of a 297  
properly adjusted occupant restraining device in violation of 298  
division (B) (1) or (3) of this section or the failure of a 299  
person to ensure that each minor who is a passenger of an 300  
automobile being operated by that person is wearing all of the 301  
available elements of a properly adjusted occupant restraining 302  
device in violation of division (B) (2) of this section shall not 303  
be considered or used by the trier of fact in a tort action as 304  
evidence of negligence or contributory negligence. But, the 305  
trier of fact may determine based on evidence admitted 306  
consistent with the Ohio Rules of Evidence that the failure 307  
contributed to the harm alleged in the tort action and may 308  
diminish a recovery of compensatory damages that represents 309  
noneconomic loss, as defined in section 2307.011 of the Revised 310  
Code, in a tort action that could have been recovered but for 311  
the plaintiff's failure to wear all of the available elements of 312  
a properly adjusted occupant restraining device. Evidence of 313  
that failure shall not be used as a basis for a criminal 314  
prosecution of the person other than a prosecution for a 315  
violation of this section; and shall not be admissible as 316  
evidence in a criminal action involving the person other than a 317  
prosecution for a violation of this section. 318

(2) If, at the time of an accident involving a passenger 319

car equipped with occupant restraining devices, any occupant of 320  
the passenger car who sustained injury or death was not wearing 321  
an available occupant restraining device, was not wearing all of 322  
the available elements of such a device, or was not wearing such 323  
a device as properly adjusted, then, consistent with the Rules 324  
of Evidence, the fact that the occupant was not wearing the 325  
available occupant restraining device, was not wearing all of 326  
the available elements of such a device, or was not wearing such 327  
a device as properly adjusted is admissible in evidence in 328  
relation to any claim for relief in a tort action to the extent 329  
that the claim for relief satisfies all of the following: 330

(a) It seeks to recover damages for injury or death to the 331  
occupant. 332

(b) The defendant in question is the manufacturer, 333  
designer, distributor, or seller of the passenger car. 334

(c) The claim for relief against the defendant in question 335  
is that the injury or death sustained by the occupant was 336  
enhanced or aggravated by some design defect in the passenger 337  
car or that the passenger car was not crashworthy. 338

(G) (1) Whoever violates division (B) (1) of this section 339  
shall be fined thirty dollars. 340

(2) Whoever violates division (B) (3) of this section shall 341  
be fined twenty dollars. 342

(3) Except as otherwise provided in this division, whoever 343  
violates division (B) (4) of this section is guilty of a minor 344  
misdemeanor. If the offender previously has been convicted of or 345  
pleaded guilty to a violation of division (B) (4) of this 346  
section, whoever violates division (B) (4) of this section is 347  
guilty of a misdemeanor of the third degree. 348

**Section 2.** That existing sections 4511.093, 4511.81, and 349  
4513.263 of the Revised Code are hereby repealed. 350