



Am. Sub. H.B. 320
127th General Assembly
(As Passed by the General Assembly)

Reps. Jones, Brown, Evans, J. McGregor, Schindel, Stebelton, Uecker, Combs, Domenick, Newcomb, Ujvagi, Wachtmann, Boyd, Chandler, DeBose, DeGeeter, Dyer, Gardner, Heard, Hite, Hottinger, Koziura, Oelslager, Schneider, Skindell, Widener, S. Williams, Yates, Yuko

Sens. D. Miller, Austria, Lehner, Kearney, Stivers, Morano, Padgett

Effective date: *

ACT SUMMARY

- Generally, requires any child who is less than eight years old and less than four feet, nine inches tall to be secured in a booster seat when traveling in a motor vehicle if the child is not otherwise required to be secured in a child restraint system and designates that this offense is a "secondary" traffic violation.
- Specifies that the child restraint requirements do 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 subject to the restraint provisions.
- Provides that the child restraint provisions do not apply to a person operating a motor vehicle who has an affidavit signed by a licensed physician or chiropractor that states that the child who otherwise would be required to be restrained has a physical impairment that makes use of a child restraint system, booster seat, or occupant restraining device impossible or impractical.

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

- Deems it to be a single violation if the operator of a motor vehicle, at the same time, on the same day, and at the same location, fails to properly secure more than one child in a required child restraint system, booster seat, or occupant restraining device.
- Sets the fine for a violation of the child restraint requirements at not less than \$25 nor more than \$75.
- Permits a court, under certain circumstances, to grant unaccompanied driving privileges one time to a probationary driver's license holder who, because of a moving violation, otherwise would be subject to a restriction that the holder be accompanied by the holder's parent or guardian for a period of time.

CONTENT AND OPERATION

Child restraint requirements

Under continuing law, a child who is less than four years old or who weighs less than 40 pounds, or both, must be secured in a federally approved child restraint system when being transported in a motor vehicle (other than a taxi or public safety vehicle) (R.C. 4511.81(A) and (B)). Ongoing law also provides that when any child who is at least 4 years of age but not older than 15 years of age is being transported in a motor vehicle (other than a taxicab or a public safety vehicle) that is required by the United States Department of Transportation to be equipped with seat belts at the time of manufacture or assembly, the vehicle operator must have the child properly restrained either in accordance with the manufacturer's instructions in a child restraint system (which may be a booster seat) that meets federal motor vehicle safety standards or in an occupant restraining device (seat belt) (R.C. 4511.81(C)).

Violation of this requirement is a minor misdemeanor on a first offense and the offender is subject to a mandatory fine of at least \$25. Subsequent offenses are a fourth degree misdemeanor. Continuing law also establishes that the failure to use a child restraint system when required may not be used in a related civil or other criminal action. (R.C. 4511.81(G) and (K).)

Continuing law further provides that, relative to the provision regarding the transportation of children who are at least 4 years of age but not older than 15 years of age (R.C. 4511.81(C)), enforcement of that provision by law enforcement officers is "secondary" and not primary. That is, a law enforcement officer cannot cause the 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

that provision (regarding the transportation of children between the ages of 4 and 15) 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. In addition, a law enforcement officer cannot 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. (R.C. 4511.81(D).)

Under the act, a child who is less than eight years old and less than four feet nine inches in height, must be secured in a booster seat when being transported in a motor vehicle (other than a taxi, public safety vehicle, or regulated vehicle that is used by a child care center for transporting children), if that child is not otherwise required to be transported in a child restraint system. Booster seats required under the act must meet federal motor vehicle safety standards. Enforcement of this provision by law enforcement officers is "secondary" and not primary; as described above, a law enforcement officer cannot stop a motor vehicle for the sole purpose of determining whether a booster seat violation has occurred. (R.C. 4511.81(C) and (E).)

The act modifies the provision of former law that required any child who was at least 4 years of age but not older than 15 years of age to be properly restrained either in a child restraint system or in an occupant restraining device so that this requirement now applies if the child is between 8 and 15 years of age and is not otherwise required to be in a child restraint system or a booster seat. For example, a child who is 7 years old and over four feet nine inches in height would not specifically be required to be in a booster seat, but would continue to be required by ongoing law to be in a child restraint system or occupant restraining system. A child who is 7 years old and less than four feet nine inches in height specifically would be required to be in a booster seat. (R.C. 4511.81(D).)

Former law provided that the child restraint provisions did not apply when an emergency existed that threatens the life of any person operating a motor vehicle and to whom the child restraint provisions would apply or the life of any child who otherwise would be required to be restrained. The act modifies this provision so that the child restraint provisions do 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 subject to the child restraint provisions. (R.C. 4511.81(H).)

The act also provides that the child restraint provisions do not apply to a person operating a motor vehicle who has an affidavit signed by a licensed physician or chiropractor that states that the child who otherwise would be required to be restrained has a physical impairment that makes use of a child

restraint system, booster seat, or occupant restraining device impossible or impractical. This exception applies only if the vehicle operator has safely and appropriately restrained the child in accordance with any recommendations of the physician or chiropractor as noted on the affidavit. (R.C. 4511.81(H).)

Ongoing law also creates the Child Highway Safety Fund, which consists of fines from child restraint violations and is used by the Department of Health, in part, to administer a child highway safety program to educate the public about child restraint systems generally and the importance of their proper use. The program also includes a process for providing child restraint systems to persons who meet the eligibility criteria established by the Department, and a toll-free telephone number the public may utilize to obtain information about child restraint systems and their proper use. The act specifies that the Fund and program also apply to booster seats. (R.C. 4511.81(I).)

Continuing law provisions governing the effect of failure to secure a child in a child restraint system in a civil or other criminal action also apply to the failure to use a booster seat.

The act stipulates that nothing in the child restraint provisions is to be construed to require any person to carry the birth certificate of a child to prove the age of the child. However, production of a valid birth certificate showing that a child was not of an age to which the restraint requirements apply is a valid defense against any ticket, citation, or summons for a child restraint violation. (R.C. 4511.81(K).)

One provision of the general occupant restraining device statute (R.C. 4513.263) prohibits any person from occupying, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway unless the person is wearing all of the available elements of a properly adjusted occupant restraining device (R.C. 4513.263(B)(3)). This prohibition does not apply to a person who is required by the child restraint law to be secured in a child restraint device (R.C. 4513.263(C)). The act provides that this prohibition also does not apply to a person who is required to be secured in a booster seat.

The act deems it to be a single violation if the operator of a motor vehicle, at the same time, on the same day, and at the same location, fails to properly secure more than one child in a required child restraint system, booster seat, or occupant restraining device. Additionally, the act sets the fine for a violation of the child restraint requirements at not less than \$25 nor more than \$75. (R.C. 4511.81(L).)

The effective date of the booster seat portions of the act is delayed by six months, and for six months following that time any person who violates the

booster seat requirements must be given a warning and not a ticket, citation, or summons.

Probationary driver's license holders

Background

A person 18 years of age or older who takes and passes the road and maneuverability tests is issued a driver's license, while a minor who takes and passes those same tests is issued a probationary driver's license. Holders of probationary driver's licenses are subject to a number of restrictions and provisions that do not apply to adults, including nighttime driving restrictions. For example, ongoing law prohibits a person who is less than 17 years of age and holds a probationary driver's license from operating a motor vehicle upon a highway or private property used by the public for purposes of vehicular travel or parking between the hours of midnight and 6 a.m. unless the holder is accompanied by the holder's parent or guardian (R.C. 4507.071(B)(1)(a)). At all other times, such a probationary license holder, being a licensed driver, is not required to be accompanied by a parent or guardian.

Law generally retained by the act provides, however, that if a person is issued a probationary driver's license prior to attaining the age of 17 years and the person pleads guilty to, is convicted of, or is adjudicated in juvenile court of having committed a moving violation during the six-month period commencing on the date on which the person is issued the probationary driver's license, the holder *must* be accompanied by the holder's parent or guardian *whenever* the holder is operating a motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular parking (not only during certain nighttime hours) during whichever of the following time periods applies, based on the age of the driver on the date of the plea, conviction, or adjudication:

- (1) If the holder has not attained the age of 16 years six months, during the six-month period commencing on that date;
- (2) If the holder has attained the age of 16 years six months but not 17 years, until the person attains the age of 17 years. (R.C. 4507.071(D)(1)(a)(i) and (ii).)

Restriction on motor vehicle operation by probationary license holders in certain circumstances

The act retains these operating restrictions, but provides that a probationary license holder who is subject to the additional "must be accompanied by a parent or guardian" operating restriction as a result of a *first* moving violation may

petition the court for occupational or educational driving privileges without being accompanied by the holder's parent or guardian during the applicable period of time. The court may grant the probationary license holder such driving privileges if the court finds reasonable cause to believe that the requirement that the holder not operate a motor vehicle unless the holder is accompanied by the holder's parent or guardian will seriously affect the holder's ability to continue in employment or educational training or will cause undue hardship on the license holder or a family member of the license holder. In granting the driving privileges, the court is required to specify the purposes, times, and places of the privileges and issue the person appropriate forms setting forth the privileges granted. Such occupational or educational driving privileges cannot be granted to the same person more than once. If a person is convicted of, pleads guilty to, or is adjudicated in juvenile court of having committed a second or subsequent moving violation, any driving privileges previously granted under the act are terminated upon the subsequent conviction, plea, or adjudication. (R.C. 4507.071(D)(2).)

HISTORY

ACTION	DATE
Introduced	09-20-07
Reported, H. Infrastructure, Homeland Security and Veterans Affairs	04-24-08
Passed House (85-10)	04-30-08
Reported, S. Highways & Transportation	12-16-08
Passed Senate (27-5)	12-17-08
House concurred in Senate amendments (80-14)	12-17-08

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