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H.B. 27  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the House

**Primary Sponsor:** Rep. Patton

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### SUMMARY

- Rephrases the prohibitions against failing to secure or cover a load on a vehicle and specifies that the culpable mental state for a violation is negligence.
- Increases the criminal penalty for failing to secure or cover a load on a vehicle from a standard minor misdemeanor with a fine of up to \$150 to the following:
  - If no physical harm is caused by the violation, a minor misdemeanor punishable by a \$500 fine; or
  - If physical harm to a person or property is caused by the violation, a third degree misdemeanor, punishable by a \$2,500 fine and any other penalty that may be imposed for a 3<sup>rd</sup> degree misdemeanor.
- Excludes the operator of a commercial motor vehicle (as defined in federal law) from the prohibitions against failing to properly secure or cover a load on a motor vehicle.

### DETAILED ANALYSIS

#### Failure to secure or cover a load on a moving vehicle

##### Culpable mental state

The bill rephrases the prohibitions against failing to secure or cover a load on a vehicle to specify that the culpable mental state for a violation is negligence.<sup>1</sup> A culpable mental state is the state of mind with which a person must act in order to be legally responsible for the offense. A person acts negligently when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that the person's conduct may cause a certain result or

<sup>1</sup> R.C. 4513.31(A) and (B).

may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, the person fails to perceive or avoid a risk that those circumstances may exist.<sup>2</sup>

Under current law, no culpable mental state is specified for a violation of the prohibitions against failure to secure or cover a load, and the prohibitions are strict liability offenses.<sup>3</sup> Most traffic laws in Chapters 4511 and 4513 of the Revised Code (such as a speeding offense, failure to stop at a stop sign, failure to equip a motor vehicle with headlights or windshield wipers, and numerous other vehicle equipment requirements) are enforced as strict liability offenses.<sup>4</sup> A strict liability offense is one for which a prosecutor is not required to prove the defendant's culpable mental state – only that the defendant committed the offense.<sup>5</sup>

The tables below illustrate the bill's revisions to the prohibitions, including the addition of negligence as the culpable mental state:

Failure to properly secure a load on a vehicle <sup>6</sup>			
	Prohibition	Culpable mental state	Exceptions
Current Law	No vehicle shall be driven or moved on any highway unless the vehicle is so constructed, loaded, or covered as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping.	Strict liability	Sand or other substance may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway to clean or maintain the roadway.
The bill	Same as current law, but rephrased to the active voice: No person operating a vehicle shall <b>negligently</b> fail to prevent any load on or in the vehicle to drop, sift, leak, or otherwise escape onto any highway.	Negligence	Same as current law: the prohibition does not apply to a person moving or driving a vehicle that is dropping or sprinkling sand or other substances for the purpose of securing traction, or water or other substances for the purpose of cleaning or maintaining the highway.

<sup>2</sup> R.C. 2901.22(D).

<sup>3</sup> R.C. 4513.31 and 4513.99(B), not in the bill.

<sup>4</sup> R.C. 4511.21, 4511.43, 4513.04, and 4513.24, not in the bill. See generally R.C. Chapters 4511 and 4513.

<sup>5</sup> R.C. 2901.21, not in the bill.

<sup>6</sup> R.C. 4513.31(A).

Failure to properly cover a load on a vehicle <sup>7</sup>			
	Prohibition	Culpable mental state	Exceptions
Current Law	No vehicle loaded with garbage, swill, cans, bottles, waste paper, ashes, refuse, trash, rubbish, waste, wire, paper, cartons, boxes, glass, solid waste, or any other material of an unsanitary nature that is susceptible to blowing or bouncing from a moving vehicle shall be driven or moved on any highway unless the load is covered with a sufficient cover to prevent the load from spilling onto the highway.	Strict liability	Two exceptions: <ul style="list-style-type: none"> <li>▪ A farm vehicle used to transport agricultural produce or agricultural production materials; and</li> <li>▪ A rubbish vehicle in the process of acquiring its load.</li> </ul>
The bill	Same as current law, but rephrased to the active voice: No person shall <b>negligently</b> fail to cover a vehicle loaded with any material (garbage, swill, cans, bottles, waste paper, ashes, refuse, trash, rubbish, waste, wire, paper, cartons, boxes, glass, solid waste, or any other material of an unsanitary nature that is susceptible to blowing or bouncing from a moving vehicle) so as to prevent the load or any part of the load from spilling onto a highway when the vehicle is driven or moved by the person on the highway.	Negligence	Same as current law.

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<sup>7</sup> R.C. 4513.31(B).

## Criminal penalties

The bill increases the criminal penalty for failing to secure or cover a load on a vehicle when driving or moving the vehicle on any highway. Current law provides that a violation of either prohibition is a minor misdemeanor, which is punishable by a fine of up to \$150.<sup>8</sup>

The bill increases the base penalty for failing to secure a load to a minor misdemeanor with a \$500 fine. And, if physical harm to a person or property is proximately caused by the violation, the offense is a 3<sup>rd</sup> degree misdemeanor.<sup>9</sup> A 3<sup>rd</sup> degree misdemeanor is generally punishable by up to 60 days in jail and a fine of up to \$500.<sup>10</sup> However, the bill specifies that the court must impose a \$2,500 fine in addition to any other penalty that may be imposed for the 3<sup>rd</sup> degree misdemeanor.<sup>11</sup> The table below illustrates the criminal penalty changes.

Criminal penalties	
Current law	Bill
Minor misdemeanor punishable by up to a \$150 fine	<p>If no physical harm is caused to person or to property:</p> <ul style="list-style-type: none"> <li>Minor misdemeanor punishable by a \$500 fine.</li> </ul> <p>If physical harm is caused to person or to property:</p> <ul style="list-style-type: none"> <li>3<sup>rd</sup> degree misdemeanor punishable by a fine of \$2,500 and any other penalty that may be imposed, including a jail term of up to 60 days.</li> </ul>

## Exemption for commercial motor vehicles

The bill excludes a person operating a commercial motor vehicle (as defined in federal law) from the prohibitions against failing to properly secure or cover a load on a motor vehicle.<sup>12</sup> Federal law specifies that a commercial motor vehicle is any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:

<sup>8</sup> R.C. 4513.99; 2929.28(A)(2), not in the bill.

<sup>9</sup> R.C. 4513.31(C).

<sup>10</sup> R.C. 2929.28 and 2929.24, not in the bill.

<sup>11</sup> R.C. 4513.31(C)(2).

<sup>12</sup> R.C. 4513.31(D).

1. Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
2. Is designed or used to transport more than eight passengers (including the driver) for compensation; or
3. Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
4. Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 United States Code (U.S.C.) 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 Code of Federal Regulations (C.F.R.), subtitle B, chapter I, subchapter C.<sup>13</sup>

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## HISTORY

Action	Date
Introduced	02-03-21
Reported, H. Criminal Justice	02-16-22
Passed House (84-9)	03-02-22

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<sup>13</sup> 49 C.F.R. 390.5.