



2013 SENATE BILL 357

October 22, 2013 – Introduced by Senators DARLING and VUKMIR, cosponsored by Representatives KERKMAN, BERNIER, BIES, KAUFERT, KLEEFISCH, KNODL, KOOYENGA, KRUG, T. LARSON, LeMAHIEU, OHNSTAD, STEINEKE, STRACHOTA, THIESFELDT and TITTL. Referred to Committee on Health and Human Services.

1 **AN ACT to create** 253.155 and 948.215 of the statutes; **relating to:** causing harm
2 to a child by cosleeping while intoxicated, providing information about
3 cosleeping while intoxicated, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under this bill, no person may injure or kill a child under 12 months of age by cosleeping, while the person is intoxicated, with the child. Under the bill, if the child suffers bodily harm as a consequence, the person is guilty of a Class H felony, if the child suffers great bodily harm as a consequence, the person is guilty of a Class F felony, and if the child dies as a consequence, the person is guilty of a Class D felony.

The bill requires the Child Abuse and Neglect Prevention Board (board) to purchase, prepare, or arrange with a nonprofit organization to prepare printed and audiovisual materials relating to cosleeping while intoxicated. The materials must include information regarding the risks of cosleeping while intoxicated and a discussion of ways to reduce the risks of cosleeping while intoxicated. The board must make the materials available to certain entities and may satisfy that requirement by making the materials available, at no charge, on its Internet site. Under the bill, the board or nonprofit organization is immune from any damages resulting from any good faith act or omission in preparing or distributing the materials.

Before an infant who is born in or en route to a hospital or a maternity home is discharged, the bill requires an attending physician, attending nurse–midwife, or other trained, designated staff member to provide to the parents of the infant the

SENATE BILL 357

board's printed materials and inform the parents about, and make available to the parents to view, the board's audiovisual materials. For an infant born elsewhere, the attending physician, attending nurse-midwife, or other trained, designated staff member of a hospital or maternity home must provide to the parents the board's printed materials and inform the parents of the availability of the board's audiovisual materials within seven days of the infant's birth. Regardless of where the infant was born, at the same time the materials are provided to the parents the person who provided the materials must provide the parent with a form, prepared by the board, that includes a statement that the parent has been advised of the risks of cosleeping with an infant while that parent is intoxicated and a statement that the parent will share that information with all persons who provide care for the infant. Under the bill, a hospital, maternity home, physician, nurse-midwife, other staff member of the hospital or maternity home, or birth attendant is immune from liability for any damages resulting from any good faith act or omission in providing the board's materials and form.

The bill also requires certain individuals and entities to provide the board's materials to specified individuals. The bill requires each school board to provide or arrange with a nonprofit organization or health care provider to provide age-appropriate instruction relating to cosleeping while intoxicated for pupils in one of grades 10 to 12. A county department or Indian tribe that provides home visitation services and providers of prenatal, postpartum, and young child care coordination services must provide to recipients of those services a copy of the board's printed materials and give an oral explanation of those materials. Under the bill, a county department, a nonprofit organization, a school board, a health care provider, an Indian tribe, or a provider of prenatal, postpartum, and young child care coordination is immune from liability for any damages resulting from any good faith act or omission in connection with providing training on cosleeping while intoxicated or providing materials relating to cosleeping while intoxicated.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 253.155 of the statutes is created to read:
- 2 **253.155 Intoxicated cosleeping. (1) DEFINITIONS.** In this section:
- 3 (a) "Board" means the child abuse and neglect prevention board.
- 4 (b) "Controlled substance" has the meaning given in s. 961.01 (4).

SENATE BILL 357

- 1 (c) “Controlled substance analog” has the meaning given in s. 961.01 (4m).
- 2 (d) “Cosleeping” means being asleep or unconscious while being on the same
3 bed or on another sleeping surface with an infant.
- 4 (e) “County department” means a county department of human services or
5 social services under s. 46.215, 46.22, or 46.23.
- 6 (f) “Health care provider” means any person who is licensed, registered,
7 permitted, or certified by the department of health services or the department of
8 safety and professional services to provide health care services in this state.
- 9 (g) “Infant” means a child from birth until 12 months of age.
- 10 (h) “Intoxicated” means having an alcohol concentration of 0.08 or more or
11 having substantially impaired physical or mental functioning as a result of the use
12 of alcohol, a controlled substance, or a controlled substance analog or other drug, or
13 any combination of those substances.
- 14 (i) “Nonprofit organization” means an organization described in section 501 (c)
15 (3) of the Internal Revenue Code that is dedicated to the prevention of injury to or
16 death of infants and the support of families affected by injury to or death of an infant.
- 17 **(2) INFORMATIONAL MATERIALS.** The board shall purchase or prepare, or arrange
18 with a nonprofit organization to prepare, printed and audiovisual materials relating
19 to cosleeping while intoxicated. The materials shall include information regarding
20 the risks of cosleeping while intoxicated and a discussion of ways to reduce the risks
21 of cosleeping while intoxicated. The materials shall be prepared in English, Spanish,
22 and other languages spoken by a significant number of state residents, as
23 determined by the board. The board shall make those printed and audiovisual
24 materials available to all hospitals, maternity homes, and nurse-midwives licensed
25 under s. 441.15 that are required to provide or make available materials to parents

SENATE BILL 357

1 under sub. (3) (a) 1., and to all school boards and nonprofit organizations that are
2 permitted to provide the materials to pupils in one of grades 10 to 12 under sub. (4).
3 The board shall also make those printed materials available to all county
4 departments and Indian tribes that are providing home visitation services under s.
5 48.983 (4) (b) 1. and to all providers of prenatal, postpartum, and young child care
6 coordination services under s. 49.45 (44). The board may satisfy the requirement
7 under this subsection by making the materials available at no charge on the board's
8 Internet site.

9 **(3) INFORMATION TO PARENTS.** (a) 1. Before an infant who is born at or en route
10 to a hospital or maternity home is discharged from the hospital or maternity home,
11 the attending physician, the attending nurse-midwife, or another trained,
12 designated staff member of the hospital or maternity home shall provide to the
13 parents of the infant, without cost to those parents, a copy of the printed materials
14 purchased or prepared under sub. (2), shall inform those parents of the availability
15 of the audiovisual materials purchased or prepared under sub. (2), and shall make
16 those audiovisual materials available for those parents to view.

17 2. Within 7 days after the birth of an infant who is born elsewhere than at or
18 en route to a hospital or maternity home, the attending physician, the attending
19 nurse-midwife, or a trained, designated birth attendant who attended the birth of
20 the child shall provide to the parents of the infant, without cost to those parents, a
21 copy of the printed materials purchased or prepared under sub. (2) and shall inform
22 those parents of the availability of the audiovisual materials purchased or prepared
23 under sub. (2).

24 (b) At the same time that the printed materials are provided under par. (a) 1.
25 or 2., the person who provides the printed materials shall also provide the parent

SENATE BILL 357

1 with a form prepared by the board in English, Spanish, and other languages spoken
2 by a significant number of state residents, as determined by the board, that includes
3 all of the following:

4 1. A statement that the parent has been advised as to the risks of cosleeping
5 while that parent is intoxicated.

6 2. A statement that the parent will share the information specified in subd. 1.
7 with all persons who provide care for the infant.

8 (c) In preparing the form under par. (b), the board may not include in the form
9 a signature line for the parent to sign or require that the parent sign the form.

10 (d) The person who provides the printed materials under par. (a) 1. or 2. and
11 the form under par. (b) shall include in the records of the hospital, maternity home,
12 or nurse-midwife relating to the infant a statement that the printed materials and
13 form have been provided as required under pars. (a) 1. or 2. and (b) and that the
14 audiovisual materials have been made available as required under par. (a) 1. or that
15 the parents have been informed of their availability as required under par. (a) 2.,
16 whichever is applicable.

17 **(4) INSTRUCTION FOR PUPILS.** Each school board shall provide or arrange with
18 a nonprofit organization or health care provider to provide age-appropriate
19 instruction relating to cosleeping while intoxicated for pupils in one of grades 10 to
20 12. The person providing the instruction may provide to each pupil receiving the
21 instruction a copy of the printed materials purchased or prepared under sub. (2), a
22 presentation of the audiovisual materials purchased or prepared under sub. (2), and
23 an oral explanation of those printed and audiovisual materials.

24 **(5) INFORMATION TO HOME VISITATION OR CARE COORDINATION SERVICES RECIPIENTS.**
25 A county department or Indian tribe that is providing home visitation services under

SENATE BILL 357

1 s. 48.983 (4) (b) 1. and a provider of prenatal, postpartum, and young child care
2 coordination services under s. 49.45 (44) shall provide to a recipient of those services,
3 without cost, a copy of the printed materials purchased or prepared under sub. (2)
4 and an oral explanation of those materials.

5 (6) IMMUNITY FROM LIABILITY. (a) The board, a nonprofit organization specified
6 under sub. (2), or a person from whom the board purchases the materials specified
7 in sub. (2) is immune from liability for any damages resulting from any good faith
8 act or omission in preparing and distributing, or in failing to prepare and distribute,
9 the materials specified in sub. (2).

10 (b) A hospital, maternity home, physician, nurse-midwife, other staff member
11 of a hospital or maternity home, or other birth attendant attending the birth of an
12 infant is immune from liability for any damages resulting from any good faith act or
13 omission in providing or failing to provide the printed and audiovisual materials
14 specified in sub. (3) (a) or the form specified in sub. (3) (b).

15 (c) A school board, nonprofit organization, or health care provider specified
16 under sub. (4) is immune from liability for any damages resulting from any good faith
17 act or omission in providing or failing to provide the instruction and the printed and
18 audiovisual materials and oral explanation specified in sub. (4).

19 (d) A county department or Indian tribe that is providing home visitation
20 services under s. 48.983 (4) (b) 1. and a provider of prenatal, postpartum, and young
21 child care coordination services under s. 49.45 (44) is immune from liability for any
22 damages resulting from any good faith act or omission in providing or failing to
23 provide the printed materials and oral explanation specified in sub. (5).

24 **SECTION 2.** 948.215 of the statutes is created to read:

25 **948.215 Intoxicated cosleeping. (1) DEFINITIONS.** In this section:

SENATE BILL 357

1 (a) "Cosleep" means to be asleep or unconscious while being on the same bed
2 or on another sleeping surface with an infant.

3 (b) "Infant" means a child from birth until 12 months of age.

4 (c) "Intoxicated" means having an alcohol concentration of 0.08 or more or
5 having substantially impaired physical or mental functioning as a result of the use
6 of alcohol, a controlled substance, or a controlled substance analog or other drug, or
7 any combination thereof.

8 **(2) PROHIBITION.** No person may cause harm to an infant by cosleeping, while
9 he or she is intoxicated, with the infant.

10 **(3) PENALTIES.** A person who violates sub. (2) is guilty of one of the following:

11 (a) A Class H felony if bodily harm to the infant is a consequence.

12 (b) A Class F felony if great bodily harm to the infant is a consequence.

13 (c) A Class D felony if death to the infant is a consequence.

14 (END)