



State of Wisconsin
2015 - 2016 LEGISLATURE

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2015 ASSEMBLY BILL 94

March 12, 2015 – Introduced by Representatives KERKMAN, EDMING, KLEEFISCH, KNODL, KREMER, KULP, T. LARSON, MURPHY, THIESFELDT, TITTL and WEATHERSTON, cosponsored by Senators DARLING, VUKMIR and WANGGAARD. Referred to Committee on Children and Families.

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 safe
3 sleep, 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 safe sleep and the dangers 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.

The bill requires a physician, a nurse–midwife, or another trained, designated health care provider to provide to a pregnant woman, free of charge and during a prenatal health care appointment in her third trimester of pregnancy, a copy of the board’s printed materials, and to inform the woman of, and make available to her to

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view, the board’s audiovisual materials. Under the bill, if after a child is born, the mother’s medical records do not indicate she received the materials at a prenatal appointment, a physician, a nurse–midwife, a birth attendant, or another trained, designated health care provider must provide to each parent of the infant who is present, before the mother is discharged from the hospital or maternity home, a copy of the printed materials and inform them of the board’s audiovisual materials. At the same time the materials are provided to the mother or 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 safe sleep, including dangers of 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 the training or materials.

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 Safe sleep. (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).

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- 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 safe sleep, including the dangers of cosleeping while intoxicated. The materials
20 shall be prepared in English, Spanish, and other languages spoken by a significant
21 number of state residents, as determined by the board. The board shall make those
22 printed and audiovisual materials available to all hospitals and maternity homes
23 and to nurse-midwives licensed under s. 441.15 that are required to provide or make
24 available materials to a parent under sub. (3) (a), and to all school boards and
25 nonprofit organizations that are permitted to provide the materials to pupils in one

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

7 **(3) INFORMATION TO PARENTS.** (a) 1. During a prenatal health care appointment
8 during the third trimester of pregnancy, a physician, a nurse-midwife, or another
9 trained, designated health care provider shall provide to the mother of the unborn
10 child, without cost to the mother, a copy of the printed materials purchased or
11 prepared under sub. (2), shall inform the mother of the availability of the audiovisual
12 materials purchased or prepared under sub. (2), and shall make those audiovisual
13 materials available for the mother to view.

14 2. If the medical records of the mother do not include the statement under par.
15 (d) that the materials and form have been provided to her at a prenatal appointment
16 as described under subd. 1., a physician, a nurse-midwife, a birth attendant, or
17 another trained, designated health care provider shall provide to each parent of the
18 infant who is present, before the mother is discharged from the hospital or maternity
19 home after childbirth and without cost to the parent, a copy of the printed materials
20 purchased or prepared under sub. (2) and shall inform the parent of the availability
21 of the audiovisual materials purchased or prepared under sub. (2).

22 (b) At the same time that the printed materials are provided under par. (a) 1.
23 or 2., the person who provides the printed materials shall also provide the parent
24 with a form prepared by the board in English, Spanish, and other languages spoken

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1 by a significant number of state residents, as determined by the board, that includes
2 all of the following:

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

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

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

9 (d) The person who provides the printed materials under par. (a) 1. or 2. and
10 the form under par. (b) shall include in the medical records of the mother a statement
11 that the printed materials and form have been provided as required under pars. (a)
12 1. or 2. and (b) and that the audiovisual materials have been made available as
13 required under par. (a) 1. or that a parent has been informed of their availability as
14 required under par. (a) 2., whichever is applicable.

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

23 **(5) INFORMATION TO HOME VISITATION OR CARE COORDINATION SERVICES RECIPIENTS.**
24 A county department or Indian tribe that is providing home visitation services under
25 s. 48.983 (4) (b) 1. and a provider of prenatal, postpartum, and young child care

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1 coordination services under s. 49.45 (44) shall provide to a recipient of those services,
2 without cost, a copy of the printed materials purchased or prepared under sub. (2)
3 and an oral explanation of those materials.

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

9 (b) A hospital, maternity home, physician, nurse-midwife, birth attendant, or
10 other health care provider is immune from liability for any damages resulting from
11 any good faith act or omission in providing or failing to provide the printed and
12 audiovisual materials specified in sub. (3) (a) or the form specified in sub. (3) (b).

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

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

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

23 **948.215 Intoxicated cosleeping. (1) DEFINITIONS.** In this section:

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

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1 (b) “Infant” means a child from birth until 12 months of age.

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

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

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

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

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

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

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(END)