

2003 DRAFTING REQUEST**Bill**Received: **02/17/2003**Received By: **agary**Wanted: **As time permits**

Identical to LRB:

For: **Rob Kreibich (608) 266-0660**By/Representing: **Brad Hub**This file may be shown to any legislator: **NO**Drafter: **agary**

May Contact:

Addl. Drafters: **rnelson2**Subject: **Transportation - motor vehicles
Courts - immunity liability**Extra Copies: **TNF, PJH**Submit via email: **YES**Requester's email: **Rep.Kreibich@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Liability exemption for persons who install child safety restraint systems

Instructions:

Wants draft modeled after the Georgia statute. See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	agary 03/13/2003	chanaman 03/17/2003	chaskett 03/17/2003	_____	amentkow 03/17/2003		
/1	agary 09/24/2003	wjackson 09/24/2003	pgreensl 09/24/2003	_____	lemery 09/24/2003	sbasford 10/14/2003 sbasford	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
				_____		10/14/2003	

FE Sent For:

*None
needed*

<END>

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1 WLJ 9/24
9/24
P8 <END> P8

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1?	agary	amb 1	1/3/17 CPH	self 3/17			
FE Sent For:		3/17					

<END>

Unofficial Copy
D3

2001 Regular Session
1h0608
CF 112601

ARG

MD

(PRE-FILED)

By: Senator Forehand
Requested: October 4, 2000
Introduced and read first time: January 10, 2001
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 21, 2001

CHAPTER _____

1 AN ACT concerning

2 Child Passenger Safety Technicians and Sponsors
3 Qualified Immunity from Civil Liability

4 FOR the purpose of providing immunity from civil liability for child passenger
5 technicians and sponsoring organizations for acts and omissions that occur
6 solely in the inspection or, installation, or adjustment of a child safety
7 motor vehicle, or in giving certain advice or assistance under certain
8 circumstances; defining certain terms; providing for the application of
9 and generally relating to qualified immunity from civil liability for child
10 passenger safety technicians and sponsoring organizations.

11 BY adding to
12 Article - Courts and Judicial Proceedings
13 Section 5-640
14 Annotated Code of Maryland
15 (1998 Replacement Volume and 2000 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 Article - Courts and Judicial Proceedings

19 5-640.

20 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

Aver,

*This is the child restraint
legislation we discussed.*

*George is what we would
like to model after, Alan
Korn is a contact as well*

*Thank,
Brid*

Alan Korn

akorn@safekids.org

GA 1066

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to
2 general provisions relative to torts, so as to provide for a limitation on the liability of certified
3 child safety passenger technicians and sponsoring organizations; to provide for definitions;
4 to provide for a standard of care; to provide for exceptions; to provide for other matters
5 relative to the foregoing; to provide for applicability; to repeal conflicting laws; and for other
6 purposes.
7

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general
11 provisions relative to torts, is amended by adding following Code Section 51-1-20.1, a new
12 Code Section 51-1-20.2 to read as follows:

13 '51-1-20.2.

14 (a) As used in this Code section, the term:

15 (1) 'Child passenger safety technician' means a person who holds a current certification
16 as a child passenger safety technician or technician instructor by the National Highway
17 Traffic Safety Administration of the United States Department of Transportation, the
18 American Automobile Association, or other entity designated by the National Highway
19 Traffic Safety Administration.

20 (2) 'Child safety seat' means a seat as defined in paragraph (1) of subsection (b) of Code
21 Section 40-8-76.

22 (3) 'Sponsoring organization' means a person or organization that:

- 23 (A) Employs a child passenger safety technician;
24 (B) Offers or arranges for the public, a nonprofit child safety seat educational program,
25 checkup event, or fitting station program utilizing child passenger safety technicians;
26 or

1 (C) Owns property upon which a nonprofit child safety seat educational program,
2 checkup event, or fitting station program for the public occurs.

3 (b) A child passenger safety technician or sponsoring organization shall not be liable to
4 any person as a result of any act or omission that occurs solely in the inspection,
5 installation or adjustment of a child safety seat, or in providing education regarding the
6 installation or adjustment of a child safety seat if the child passenger safety technician or
7 sponsoring organization provides the services without a fee or charge to the owner or
8 operator of the motor vehicle and acts in good faith within the scope of training for which
9 the technician is currently certified and unless the act or omission constitutes willful and
10 wanton misconduct or gross negligence.

11 (c) This Code section shall apply to any cause of action arising on or after July 1, 2002.

12 SECTION 3.

13 All laws and parts of laws in conflict with this Act are repealed.

CHAPTER 293

An Act to amend the Code of Virginia by adding a section numbered 8.01-226.5, relating to immunity for the installation and inspection of child restraint devices.

[S 1329]

Approved March 22, 1999

VA

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-226.5 as follows:

§8.01-226.5. Immunity for installers and inspectors of child restraint devices.

Any person who has successfully met the minimum required training standards for installation of child restraint devices established by the National Highway Traffic Safety Administration of the United States Department of Transportation, who in good faith and without compensation installs, or inspects the installation of, a child restraint device shall not be liable for any damages resulting from an act or omission related to such installation or inspection, unless such act or omission was the result of the person's gross negligence or willful misconduct.

 [Go to \(General Assembly Home\)](#)



The author is former executive director of the National Safety Council's Air Bag & Seat Belt Safety Campaign. Her commitment to helping protect children through prevention stems from her training as an occupational therapist. Dewey-Kolien, a certified child passenger safety technician, has a 11-year-old son who always sits buckled-up in a rear seat. Contact her at janet@kolien.com

Protecting Those Who Work to Protect Kids Child Passenger Safety 'Good Samaritan Laws'

by Janet Dewey-Kolien

American motorists use child safety seats incorrectly 85 to 90 percent of the time, a serious obstacle to protecting children from their leading cause of death — motor vehicle crashes. While the recently announced Lower Anchors and Tethers for Children, or LATCH, standard will help improve child-restraint installation, it will be 10 to 15 years before LATCH-equipped vehicles are fully integrated

throughout the U.S. auto fleet.

To help parents and caregivers learn to use child safety seats correctly, more than 3,600 sites across the country offer child safety seat inspections. Law enforcement agencies, fire and EMS departments, hospitals and health care facilities, auto dealerships, community organizations and child specialty stores sponsor these "fitting" stations. Most of these services are provided free-of-charge by certified child passenger safety technicians. Although the impact is difficult to quantify, anecdotes abound about children whose child safety seats were checked and re-installed and who later survived horrific crashes unscathed.

Potential Liability Concerns

For public agencies, not-for-profit agencies and businesses, concern about potential liability is a barrier to setting up a fitting station. These groups are concerned that they might be sued in the event that a child sustains crash-related injury after his safety seat is adjusted at their inspection station.

Some certified technicians are concerned as well, particularly those who are not employed by agencies, but who

provide services on a volunteer basis. Inspection services depend on these volunteers to provide check-up services at large community-wide events. More than 26,000 certified techs perform inspections in the United States.

Retailers have expressed similar liability concerns, according to Tom Baloga of Charlotte, N.C.-based Britax Child Safety Inc., a child safety seat manufacturer. "Retailers tell us that they are afraid to provide detailed fitting instructions to consumers because they fear law suits. On the advice of legal counsel, most retailers forbid their staff from attaching a child seat into a consumer's vehicle," Baloga said.

Sue Miller, owner of the USA BABY child specialty store in Appleton, Wis., is one of very few retailers to offer safety seat inspection services. "Several years ago I became trained as a tech and have since required all of my employees to complete the training. I offer the inspection service at my store for the public. We currently inspect about five seats a day. I am quite comfortable with what we are doing. In fact, I would feel more vulnerable if we did not offer this service and just sold products without informing customers."

Lawsuits & Inspection Services

According to the National Highway Traffic Safety Administration's *Standardized Child Passenger Safety Training Program Participant Manual*, 2001 edition, the only suits to date, both filed in 1996, point out the need for providers to keep educational materials current and to take training programs for child passenger safety seriously. In the first case, a hospital was sued because of an infant death involving an airbag. Although the hospital had given out a flyer on air bag safety, it also had shown an out-of-date video that recommended putting an infant in the front seat. The second hospital suit involved an infant death due to an occluded airway. Reportedly, an untrained hospital employee had helped put the baby's car seat in the family vehicle. NHTSA's Standardized Child Passenger Safety Training Program is a national training program for child passenger safety technicians.

According to Alan Korn, public policy director and general counsel for the National SAFE KIDS Coalition, "Fear of liability is often a front-end concern that prevents agencies or businesses from getting started with child passenger safety services or expanding from educational to hands-on services.

"However, I don't know of any legal action that threatened negligence concerning a child safety seat installed



through an inspection station or check-up event program," Korn said.

With more than 8,000 safety seat check-up events, 300,000 child seats inspected and 225,000 seats distributed, the SAFE KIDS Coalition is the most experienced organization doing child passenger safety work. "The National SAFE KIDS organization and its more than 300 state and local coalitions have never experienced a threatened suit," Korn said. SAFE KIDS adherence to high quality-assurance standards and rigorous protocols for safety seat inspection programs are essential and have contributed to its good track record.

Good Samaritan Laws Passes

Nancy Rodrigues of DRIVE SMART Virginia experienced firsthand how concerns about potential liability can cripple plans for an inspection station when her organization approached a number of hospitals in the mid-1990s to increase the number of child passenger safety inspection stations in Virginia. Consequently, in 1998, DRIVE SMART Virginia joined forces with SAFE KIDS of Virginia, the American Automobile Association, the insurance industry, Virginia Pediatric Society and a state senator to pass the first CPS Good Samaritan law in the country.

Rodrigues said the safety legislation, which passed unanimously in both the Virginia House of Delegates and Senate, has helped certified technicians in the state provide these services on a good-faith basis without fear of spurious litigation.

The Maryland Good Samaritan law, which passed in 2001 and covers both sponsoring organizations and safety technicians, states:

A child passenger safety technician or sponsoring organization is not civilly liable for an act or omission that occurs solely in the inspection, installation, or adjustment of a child safety seat in a motor vehicle, or in giving advice or assistance regarding the installation or adjustment of a child safety seat, if:

1. The child passenger safety technician acts in good faith and within the scope of the training for which the technician is currently certified.
2. The act or omission does not constitute gross negligence or willful or wanton misconduct.
3. The inspection, installation, or adjustment of the child safety seat, or the advice or assistance, is provided without fee or charge to the owner or operator of the motor vehicle.
4. The inspection, installation, or adjustment of the child safety seat is not provided in conjunction with the for-profit sale of the child safety seat.

In 2002, Georgia enacted a Good Samaritan law under the sponsorship of SAFE KIDS of Georgia and its lead organization, Children's Healthcare of Atlanta. According to Carol Ball, executive director, SAFE KIDS of Georgia, "We worked with members of the House and

Senate Judiciary Committees and lobbyists from the lawyers' associations before presenting the legislation. There was minimal opposition. This was probably one of the easiest bills I've worked on in the last five years as it passed unanimously in both legislative chambers."

Individual certified technicians and child safety advocates from several other states indicate interest in pursuing similar legislation. Officer Chuck Hilara of the Maui Police Department said he hopes to reintroduce a Good Samaritan bill in Hawaii in 2003. The 2001 attempt in that state stalled in a Senate committee after a plaintiff's attorney organization opposed it.

Avoiding Child Passenger Safety Liability

1. Take training seriously.
2. Keep current by attending update sessions and training on a regular basis.
3. Document all procedures and the skills of those you train. Keep copies of this documentation and the materials you distribute.
4. Distribute only material and information that is completely current. Mark all materials with the dates on which they are created. If new materials are created, date them and have them peer reviewed by several other specialists in the field.

Source: NHTSA's Standardized Child Passenger Safety Training Program

Insurance Coverage Limited

Liability insurance coverage — general liability or special event — also can help alleviate concerns about possible child seat installation lawsuits.

As of Dec. 31, 2002, Child Passenger Safety Professional Liability Insurance for individual certified technicians and technician instructors is no longer available. Once offered by AAA and by the defunct Center for Injury Prevention, these policies were available to individual technicians from 2000 through 2002. According to Bill Wen, manager of training and professional development for AAA, "Since the program's inception there has not been a single claim submitted. The vast majority of [certified] technicians and technician instructors have professional liability coverage provided by their employer, and only about 5 percent of all certified technicians and technician instructors purchased a liability insurance policy."

Addressing Liability Concerns

While experience shows that child passenger safety inspections provided by certified technicians have not been the object of litigation, the perception of risk by both sponsoring agencies and individuals remains an issue. Good Samaritan laws appear to be a relatively easy-to-accomplish step that helps ease potential liability concerns of those willing to provide this much-needed, lifesaving child safety service.

cmh

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

repeal

1 AN ACT ...; relating to: immunity from civil liability for providing safety services
2 related to the inspection and installation of child safety restraint systems in
3 motor vehicles.

Analysis by the Legislative Reference Bureau

Current law provides certain persons with immunity from civil liability under specified circumstances. For example, ski patrol members, and health care professionals who render emergency care without compensation, are immune from civil liability for their acts or omissions under certain circumstances. Organizations that donate food and some goods may also be immune from civil liability arising from the donated food or goods under limited circumstances.

This bill provides immunity from civil liability to a child passenger safety technician who, in good faith, inspects, installs, fits, or adjusts any child safety restraint system, or who provides education or other assistance or advice relating to the safe installation, fitting, or adjustment of child safety restraint systems. However, no immunity applies if the person receives compensation for providing the services or provides the services in a reckless, wanton, or intentionally wrongful manner. The bill also provides immunity to certain organizations with respect to their participation in safety programs that provide assistance, inspections,

education, or advice to the public in the fitting, installation, or adjustment of child safety restraint systems.

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

1 SECTION 1. 895.497 of the statutes is created to read:

2 **895.497 Liability exemption: furnishing safety services relating to**
3 **child safety restraint systems. (1) In this section:**

4 (a) “Child passenger safety technician[✓]” means a person who holds a valid
5 certification as a child passenger safety technician or technician instructor issued by
6 the National Highway Traffic Safety Administration or any entity authorized by the
7 National Highway Traffic Safety Administration to issue such certifications.

8 (b) “Safety program” means any program utilizing the services of child
9 passenger safety technicians and not conducted for pecuniary profit that provides
10 assistance, inspections, education, or advice to the public in the fitting, installation,
11 or adjustment of child safety restraint systems.

12 (c) “Sponsoring organization” means any person or organization that does any
13 of the following:

- 14 1. Employs a child passenger safety technician[✓].
- 15 2. Sponsors, offers, or organizes any safety program.
- 16 3. Owns property on which a safety program is conducted.

17 (2) (a) A child passenger safety technician who inspects, installs, fits, or adjusts
18 any child safety restraint system specified under s. 347.48[✓] (4), or who provides
19 education or other assistance or advice relating to the safe installation, fitting, or
20 adjustment of child safety restraint systems, is immune from civil liability for his or
21 her acts or omissions in rendering in good faith such services.

1 (b) The immunity under par. (a) does not extend to any of the following:

2 1. A person who receives compensation for providing the services specified in
3 par. (a), other than reimbursement for expenses.

4 2. A person whose acts or omissions in providing the services specified in par.
5 (a) involve reckless, wanton, or intentional misconduct.

6 (c) The good faith of a person in providing the services specified in par. (a) is
7 presumed in any civil action if the services provided are within the scope of the
8 person's training for which the person has been certified. Any person who asserts
9 that the acts or omissions under par. (a) were not made in good faith has the burden
10 of proving that assertion by clear and convincing evidence.

11 (3) (a) A sponsoring organization is immune from civil liability arising from any
12 acts or omissions of a child passenger safety technician in providing services
13 specified in ~~par.~~ ^{sub. (2)} (a) or arising in connection with a safety program if the sponsoring
14 organization receives no compensation for the services provided by the child
15 passenger safety technician or for participating in the safety program.

16 **SECTION 2. Initial applicability.**

17 (1) This act first applies to services provided on the effective date of this
18 subsection.

19 (END)

Barman, Mike

From: Barman, Mike
Sent: Wednesday, September 24, 2003 1:09 PM
To: Hub, Brad
Subject: LRB 03-2076/P1 (attached - per your request)



03-2076/P1

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

~~208/3/11~~

9/24/03

Brad

→ Kreibich ofc.

2076/P1

6-0660

need / 1 → want it today
no changes



State of Wisconsin
2003 - 2004 LEGISLATURE

TODAY

LRB-2076-~~001~~ /
ARG&RPN:cmh/~~cmh~~

~~cmh~~
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

REGEN

1 AN ACT *to create* 895.497 of the statutes; **relating to:** immunity from civil
2 liability for providing safety services related to the inspection and installation
3 of child safety restraint systems in motor vehicles.

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15 child passenger safety technician or for participating in the safety program.

16 **SECTION 2. Initial applicability.**

17 (1) This act first applies to services provided on the effective date of this
18 subsection.

19

(END)

Gary, Aaron

From: Gary, Aaron
Sent: Tuesday, October 14, 2003 8:52 AM
To: Barman, Mike
Subject: jacket

Mike,
Per phone request from Brad this morning, could you please jacket LRB-2076 for Rep. Kreibich? Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us