

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 2717 (Chau)
Version: March 12, 2020
Hearing Date: July 30, 2020
Fiscal: Yes
Urgency: No
AM

SUBJECT

Motor vehicles: unattended children: liability

DIGEST

This bill exempts from civil and criminal liability a person who takes any reasonable steps that are necessary to remove a child from a motor vehicle if the person holds a reasonable belief that the child's safety is in immediate danger from heat, cold, lack of adequate ventilation, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the child, so long as the person complies with certain requirements.

EXECUTIVE SUMMARY

Even though existing law makes it an infraction for a parent or any other person responsible for a young child to leave a child inside a vehicle under circumstances that pose a risk to the child's health or safety, children are still left unattended in vehicles sometimes resulting in horrific consequences. This bill grants civil and criminal immunity to a person who rescues a child six years of age or younger from a motor vehicle if the person holds a reasonable belief that the child's safety is in immediate danger and follows certain steps, such as doing no more damage to the vehicle than necessary, contacting emergency personnel, and waiting with the child until police emergency personnel arrive. This bill is similar to existing provisions of law that grants immunity to persons who rescue unattended animals from vehicles as long as they reasonably believe that the animal is in danger and follows specified steps.

The bill is supported by AAA Northern California, Nevada and Utah, Auto Club of Southern California, and the California Professional Firefighters. There is no known opposition

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This

timeline does not allow this bill to be referred and heard by more than one committee, as a typical timeline would allow. In order to vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Public Safety Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that a person has no duty to come to the aid of another, but if a person decides to assist another then that person must act with reasonable care. (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604; *Williams v. State of California* (1983) 34 Cal.3d 18.)
- 2) Exempts a person from civil liability who, in good faith and not for compensation, renders emergency or non-emergency medical or nonmedical care or assistance at the scene of an emergency unless the person commits acts or omissions that constitute gross negligence or willful or wanton conduct. (Hlth. & Saf. Code § 1799.102.)
- 3) Exempts a person from civil liability for property damage or trespass to a motor vehicle if the damage or trespass occurs while the person is rescuing a confined and unattended animal from the vehicle, if the person reasonably believes that rescue is necessary to prevent the unnecessary suffering, disability, or death of the animal. (Civ.C. § 43.100.)
- 4) Makes it an infraction for a parent, legal guardian, or any other person responsible for a child six years of age or younger to leave that child inside a motor vehicle, unless the child is supervised by a person at least twelve years of age, under any circumstances that would pose a significant risk to the child's health or safety. (Veh.C. § 15620.)

This bill:

- 1) Permits a person to take any reasonable steps that are necessary to remove a child from a vehicle if the person holds a reasonable belief that the child's safety is in immediate danger from heat, cold, lack of adequate ventilation, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the child. A child is defined as a child who is six years of age or younger.
- 2) Provides that a person who removes a child under these circumstances is not criminally liable for actions taken reasonably and in good faith if the person does all of the following:
 - a) Determines the vehicle is locked or there is otherwise no reasonable manner for the child to be removed from the vehicle.

- b) Has a good faith belief that forcible entry into the vehicle is necessary because the child is in imminent danger of suffering harm if not immediately removed from the vehicle, and, based upon the circumstances known to the person at the time, the belief is a reasonable one.
 - c) Has contacted a local law enforcement agency, the fire department, or the "911" emergency service prior to forcibly entering the vehicle.
 - d) Remains with the child in a safe location, out of the elements but reasonably close to the vehicle, until a peace officer or another emergency responder arrives.
 - e) Used no more force to enter the vehicle and remove the child from the vehicle than was necessary under the circumstances.
 - f) Immediately turns the child over to a representative from law enforcement or another emergency responder who responds to the scene.
- 3) Provides that these provisions do not prevent a peace officer, firefighter, or other emergency responder from removing a child from a motor vehicle if the child's safety appears to be in immediate danger from heat, cold, lack of adequate ventilation, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the child.
 - 4) Requires a peace officer, firefighter, or other emergency responder who removes a child from a motor vehicle, or who takes possession of a child who has been removed from a motor vehicle, to take the child to a hospital for diagnosis and treatment. The parent of a child removed from a vehicle may be required to pay for charges that may accrue for the care or medical treatment of the child.
 - 5) Authorizes a peace officer, firefighter, or other emergency responder to take all steps that are reasonably necessary for the removal of a child from a motor vehicle, including, but not limited to, breaking into the motor vehicle, after a reasonable effort is made to locate the owner or other person responsible.
 - 6) Requires a peace officer, firefighter, or other emergency responder who removes a child from a motor vehicle or who receives a child rescued from a vehicle from another person to, in a secure and conspicuous location on or within the motor vehicle, leave written notice bearing their name and office and the address of the location where the child will be treated.
 - 7) Provides that a person shall not be civilly liable for property damage or trespass to a motor vehicle if the damage was caused while the person was rescuing a child in accordance with these provisions.

COMMENTS

1. Stated need for the bill

The author writes:

California has laws to exempt Good Samaritans from criminal or civil liability in the rescue of animals left unattended in vehicles, but no such laws in the rescue of children. AB 2717 would exempt a person from civil and criminal liability for property damage or trespass to a motor vehicle, if it occurs while the person is rescuing a child who is 6 years of age or younger under circumstances that reasonably could cause suffering, disability, or death to the child, and they take certain steps during the removal.

Prior to forcibly entering a vehicle, a person must have contacted a local law enforcement agency, the fire department or called "911" if they hold reasonable belief that the child's safety is in immediate danger from heat, cold, lack of adequate ventilation or other circumstances. In addition, the person has also determined that the vehicle is locked or there is otherwise no reasonable manner for the child to be removed from the vehicle and in good faith believes that forcible entry into the vehicle is necessary. The person must remain near the vehicle at a safe location until an emergency responder arrives and immediately turn the child over to a representative from law enforcement or another emergency responder at the scene.

It would also establish procedures that apply to a peace officer or emergency responder under those circumstances, including, but not limited to, requiring transportation of the child to a hospital for treatment.

2. "Good Samaritan" laws and qualified immunity

California generally follows the traditional principles of common law that a person has no duty to come to the aid of another except for special relationships (like a parent and child). Like many other states, California provides for so-called "Good Samaritan" laws that provide immunity from liability if a person does assist another and during that assistance an unintended injury to person or property occurs. In order to receive immunity from liability, the person offering assistance has a duty to exercise reasonable care, and if that person's actions fall below this standard of care and causes harm, then the Good Samaritan may be held liable.

Immunity provisions are generally disfavored because they, by their nature, prevent an injured party from seeking a particular type of recovery. The Legislature has, in limited scenarios, approved limited immunity from liability (as opposed to blanket immunities) to promote other policy goals that benefit the public. For example, existing California law provides immunity from civil liability to a person who in good faith and not for

compensation renders emergency or non-emergency medical or nonmedical care or assistance at the scene of an emergency unless the person commits acts or omissions that constitute gross negligence or willful or wanton conduct. In 2016, the Legislature approved AB 797 (Steinorth, Ch. 554, Stats. 2016), which provided a person is not civilly or criminally liable for property damage or trespass to a motor vehicle, if the damage was caused while the person was rescuing an animal in accordance with certain provisions in the Penal Code.

This bill seeks to now provide Good Samaritans who act reasonably to save the life of a child who is six years of age or younger with immunity from criminal and civil liability for property damage or trespass to a motor vehicle if the property damage or trespass occurs while the person is rescuing the child. The bill also establishes procedures that apply to a peace officer or emergency responder under those circumstances, including, requiring transportation of the child to a hospital for diagnosis and treatment and requiring that they leave written notice bearing their name and office and the address of the location where the child was taken to be treated in a secure and conspicuous location on or within the motor vehicle.

3. Bill appears to craft a narrow immunity for the reasonable actions of a Good Samaritan to rescue a child whose safety is in immediate danger

The bill's provisions create civil and criminal immunity to encourage Good Samaritans to act when it becomes clear that it is necessary to remove a child from a motor vehicle if the person holds a reasonable belief that the child's safety is in immediate danger from heat, cold, lack of adequate ventilation, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the child. Existing law already makes it an infraction for a parent, legal guardian, or other responsible person to leave a child under six years of age in a vehicle unattended; however, 39 children die each year on average in the United States from heatstroke after being left in a vehicle, with California having 52 such deaths since 1998.¹ The bill's provisions appear to base the immunity narrowly on a person's reasonable and good faith belief that the child's safety is in immediate danger necessitating forcible entry into the vehicle as long as the Good Samaritan takes specific actions before forcible entry. These actions include: determining the vehicle is locked or there is otherwise no reasonable manner for the child to be removed from the vehicle; contacting local law enforcement, the fire department, or 911 emergency services; remaining with the child in a safe location, out of the elements but reasonably close to the vehicle, until an officer or emergency responder arrives, and immediately turning the child over to a representative from law enforcement or other emergency responder at the scene. The immunity is further narrowly tailored in that it limits the civil immunity to property damage or trespass to a motor vehicle. In light of the fact that the Legislature granted immunity to persons who

¹ *Motor Vehicle Safety Issues: Hot Car Deaths*, National Safety Council (2020) available at <https://injuryfacts.nsc.org/motor-vehicle/motor-vehicle-safety-issues/hotcars/> (as of Jul. 7, 2020).

rescue unattended animals from vehicles, so long as they reasonably believe that the animal is in danger and follows specified steps, it seems eminently reasonable to offer similar immunity to persons who rescue young children in similar circumstances.

4. Statements in Support

The California Professional Firefighters write in support, stating:

Each year as summer approaches and the weather begins to get warmer, news stories begin to increase regarding the devastating consequences of leaving an unattended child in a locked car. While forgetting a child in the back seat of their car is every parent's worst nightmare, the numbers of children who have been injured or died as a result of pediatric vehicular heatstroke (PVH) have increased since they were first recorded in the 1990's. In fact the deadliest year on record for PVH was 2018 when 53 cases were recorded nationwide, three of which occurred in California [...]

AB 2717 would extend existing Good Samaritan protections to those who act in good faith to render emergency assistance from liability to individuals who take action to rescue a child younger than six years old from a motor vehicle. When there is so little time to prevent the injury or death of a young child, individuals who are on the scene and able to respond immediately should not be punished for property damage caused to the vehicle during the rescue. California's firefighters are often the first on the scene when these horrific accidents occur, and know firsthand the devastation that comes with these tragic incidents. For these reasons and more, **we urge your support for AB 2717.** [emphasis in original]

The AAA Clubs write in support jointly:

A child dies from a heatstroke about once every 10 days from being left alone in a hot vehicle. In fact, heatstroke is the leading cause of non-crash vehicle fatality for kids 14 and younger according to AAA research. In 90-degree weather, the inside of cars can reach 133 degrees when in direct sunlight. Even mild weather can be dangerous for young people because their bodies can heat up five times faster than adults. There are too many tragic fatalities and even more "close calls" because of incidents involving children trapped inside cars.

More than 1 in 5 of the 50 million AAA members nationwide reside in California. The AAA Clubs regularly use our communication reach to remind all motorists not to leave kids in hot cars every summer. Unfortunately, educational campaigns are not enough given the deadly consequences at risk. Accordingly, the AAA Clubs encourage a yes vote on AB 2717. No one should have to think twice about liability issues before saving the life of a child trapped in a hot car.

SUPPORT

AAA Northern California, Nevada and Utah
Auto Club of Southern California
California Professional Firefighters

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 797 (Steinorth, Ch. 554, Stats. 2016), provided immunity to persons who rescue unattended animals from vehicles if they reasonably believe that the animal is in danger and take certain steps.

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)
Assembly Appropriations Committee (Ayes 18, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 0)
