

## CONCURRENCE IN SENATE AMENDMENTS

AB 2717 (Chau)

As Amended August 19, 2020

Majority vote

**SUMMARY:**

Provides immunity from liability to a person who rescues an unattended and endangered child from a vehicle, subject to certain conditions.

**Major Provisions**

- 1) Permits a person to take reasonable steps 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. Provides further that a person who removes a child from a vehicle 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.
- 2) Specifies that a peace officer, firefighter, or other emergency medical technician (EMT) personnel who removes a child shall arrange for treatment or transportation, as specified.
- 3) 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 the criteria prescribed in 1) above.
- 4) Defines "child" for purposes of the above to mean a child six years of age or younger.

**The Senate Amendments:**

Specify that a peace officer, firefighter, or other EMT who removes a child from a car shall arrange for treatment or transport of the child, as specified.

**COMMENTS:**

Existing law makes it an infraction for a parent, legal guardian, or any other responsible person to leave a child of six years or younger in a motor vehicle, under circumstances that would pose a significant risk to the child's health or safety, unless the child is supervised by another person at least twelve years of age. Notwithstanding this law, some parents, legal guardians, and others apparently still leave children unattended in vehicles. According to studies provided by the author, there are still a surprising number of children who suffer "pediatric heatstroke" and related problems as a result of parents leaving them in parked vehicles. This bill would grant criminal and civil immunity to any person who rescues a child from a vehicle, so long as the rescuer reasonably believes that the child is in danger, does no more damage to the vehicle than is necessary, contacts law enforcement or emergency personnel, and waits with the child until police officers or emergency personnel arrive on the scene.

*"Good Samaritan" Immunity in Existing Law.* California generally follows the common law "no duty to rescue" rule. This means that absent some "special relationship" (e.g. parent-child, teacher-student, etc.) we have no *legal* duty to come to the aid of others, even if we could do so with minimal risk or effort. California, like most other states, has countered this rather antisocial common law rule by enacting so-called "Good Samaritan" laws, which provide immunity from liability to persons who voluntarily come to the aid of others, should their intervention result in an unintended injury to person or property. Some advocates claim that Good Samaritan laws encourage potentially life-saving intervention by removing the fear of liability. This reasoning assumes, however, that a person who would otherwise act honorably to save another would be deterred by fear of a lawsuit. Whether or not a would-be rescuer would stop and think about a lawsuit in the heat of the moment is debatable, but there is perhaps a better and simpler justification for offering qualified immunity: it seems inherently unfair to punish people who potentially risk their lives by voluntarily coming to the aid of others.

*Existing immunity protects medical and non-medical interventions.* Prior to AB 83 (Feuer) Chapter 77, Statutes of 2009, California law only provided qualified immunity to persons who rendered emergency "medical care" at the scene of an emergency. AB 83 was enacted in response to the California Supreme Court's decision in *Van Horn v. Watson* (2008) 45 Cal. 4th 322. In that case, the driver of a vehicle that had crashed pulled an unconscious passenger from the car, apparently fearing that the car might catch on fire or even explode. However, in pulling the passenger from the car, the driver unintentionally may have worsened the injuries. The passenger pulled from the vehicle subsequently sued the driver for those added injuries. The Supreme Court narrowly interpreted then-existing law as only granting immunity to persons who render "medical" aid at the "scene of an emergency," and determined that pulling the person from the vehicle was not, according to the Court, a *medical* intervention. In response to this decision, AB 83 amended the law to clarify that laypersons who render medical *or nonmedical* care or assistance at the scene of an emergency are immune from liability, so long as their conduct does not constitute "gross negligence" or willful or wanton conduct. One could argue, therefore, that rescuing a child from a vehicle, where the rescuer reasonably believes that there is a significant risk to the health and safety of the child, is nonmedical assistance in an emergency and therefore already immune from liability under existing law. However, this bill would remove any ambiguity as to whether encountering an unattended child in a vehicle constitutes being at the "scene of an emergency" under existing law by expressly granted immunity to any person who reasonably rescues an endangered child from a vehicle.

It is important to note the limited nature of the immunity provided by this bill. First, the bill only provides immunity for damage or trespass to *property*; it would *not* provide immunity if the rescuer caused injury to *the child*. Second, the immunity only applies where the rescuer acted upon "reasonable" belief that the child was in danger *and* that the rescuer follows prescribed steps, including not doing more damage to the vehicle than is necessary, contacts law enforcement or emergency personnel, and waits with the child until police officers or emergency personnel arrive on the scene.

Lastly, this bill seems more than reasonable in light of AB 797 (Steinorth) Chapter 554, Statutes of 2016, which offers immunity to persons who rescue unattended animals from vehicles, so long as they reasonably believe that the animal is in danger and then follows prescribed steps. This bill is almost identical in content and structure to AB 797. Surely, if we grant immunity to people who rescue animals from vehicles, we should afford the same immunity to people who rescue young children.

#### **According to the Author:**

According to the author, "California has laws to exempt Good Samaritans from criminal or civil liability in the rescue 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."

#### **Arguments in Support:**

The California Professional Firefighters write that, "AB 2717 would extend existing Good Samaritan protections to those who act in 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."

#### **Arguments in Opposition:**

None on file

#### **FISCAL COMMENTS:**

According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

#### **VOTES:**

##### **ASM JUDICIARY: 10-0-1**

**YES:** Mark Stone, Gallagher, Chau, Chiu, Gonzalez, Holden, Kiley, Maienschein, Obernolte, Reyes

**ABS, ABST OR NV:** Kalra

**ASM APPROPRIATIONS: 18-0-0**

**YES:** Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

**ASSEMBLY FLOOR: 76-0-3**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon  
**ABS, ABST OR NV:** Low, Muratsuchi, Quirk

**SENATE FLOOR: 30-0-10**

**YES:** Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener  
**ABS, ABST OR NV:** Bates, Borgeas, Chang, Dahle, Grove, Jones, Melendez, Moorlach, Morrell, Wilk

**UPDATED:**

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CONSULTANT: Thomas Clark / JUD. / (916) 319-2334

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