

NO. A05-1038

---

State of Minnesota  
**In Court of Appeals**

---

Ted Harrison, Jr., a minor, by  
Audrey Harrison, his guardian ad litem,  
*Respondent,*

v.

Amy and Ted Harrison, Sr.,  
*Appellants.*

---

**APPELLANTS' BRIEF AND APPENDIX**

---

William L. Davidson (#201777)  
Brian A. Wood (#141690)  
Sara J. Lathrop (#0310232)  
LIND, JENSEN, SULLIVAN &  
PETERSON, P.A.  
150 South Fifth Street, Suite 1700  
Minneapolis, MN 55402  
(612) 333-3637

*Attorneys for Appellants*

Robert J. King, Jr. (#55906)  
LOMMEN, NELSON, COLE &  
STAGEBERG  
2000 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
(612) 336-9348

*Attorneys for Respondent*

## Table of Contents

	<u>Page</u>
Table of Contents .....	i
Table of Authorities.....	iii
Statement of the Legal Issue .....	1
Statement of the Case.....	1
Statement of Facts.....	2
Standard of Review .....	5
Argument and Authorities .....	6
I.    The gag rule exception for product liability claims does not apply to a parent’s alleged negligence in placing a car seat into the backseat of a vehicle and strapping his child into it .....	6
A.    History of the gag rule and its exception .....	7
1.    Legislature enacts seat belt gag rule.....	7
2.    Supreme Court issues <u>Olson v. Ford</u> decision .....	8
3.    Legislature enacts product liability exception to gag rule .....	9
B.    The gag rule exception is for product liability claims, not claims for a parent’s alleged negligence in placing a child into a car seat.....	10
1.    The unambiguous meaning of the text of the statute is that the gag rule exception applies only to defective installation. The claim against Appellants is for “negligent” installation, not “defective” installation, and thus evidence of Appellants’ installation and maintenance of the car seat is inadmissible.....	10

a.	This claim is for negligent installation, not defective installation .....	11
b.	The phrase “defective installation” cannot and should not be stretched to apply to a parent placing a car seat in an automobile, and strapping his child into it. ....	14
C.	Legislative intent indicates the exception applies to product liability cases only .....	17
1.	The occasion and necessity for the law, the circumstances under which it was enacted, and the previous statute all indicate that the exception applies only to product liability claims .....	18
2.	Respondent’s interpretation of the exception creates an absurd result .....	19
	Conclusion .....	21

## Table of Authorities

<u>Cases</u>	<u>Page</u>
<u>Anker v. Little</u> , 541 N.W.2d 333 (Minn. App. 1995) .....	8
<u>Carlson v. Hyundai Motor Co.</u> , 164 F.3d 1160 (8th Cir. 1999) .....	8-9
<u>City of Coon Rapids v. Suburban Engineering, Inc.</u> , 283 Minn. 151, 167 N.W.2d 493 (1969) .....	15
<u>Farnham v. Nasby Agri-Systems, Inc.</u> , 437 N.W.2d 759 (Minn. App. 1989) .....	15
<u>Fiveland v. Bollig &amp; Sons, Inc.</u> , 436 N.W.2d 478 (Minn. App. 1989) .....	13
<u>Franklin v. Western National Mutual Insurance Co.</u> , 574 N.W.2d 405 (Minn. 1998).....	14
<u>Frost-Benco Electric Association v. Minnesota Public Utilities Commission</u> , 358 N.W.2d 639 (Minn. 1984).....	5
<u>Gess v. Sill</u> , 312 Minn. 288, 251 N.W.2d 650 (1977) .....	15
<u>Herrmann v. McMenemy &amp; Severson</u> , 590 N.W.2d 641(Minn. 1999) .....	5
<u>Ladner v. United States</u> , 358 U.S. 169, 79 S. Ct. 209 [3 L.Ed.2d 199] (1958) .....	11
<u>Marsden v. Crawford</u> , 589 N.W.2d 804 (Minn. App. 1999).....	1, 16
<u>Minnesota Citizens Concerned for Life, Inc. v. Kelley</u> , 698 N.W.2d 424 (Minn. 2005).....	6
<u>O’Laughlin v. Minnesota Natural Gas Co.</u> , 253 N.W.2d 826 (Minn. 1977).....	15
<u>Olson v. Ford Motor Co.</u> , 558 N.W.2d 491 (Minn. 1997).....	7-8
<u>Rettman v. City of Litchfield</u> , 354 N.W.2d 426 (Minn. 1984).....	15
<u>Schlotz v. Hyundai Motor Co.</u> , 557 N.W.2d 613 (Minn. App. 1995) .....	8

<u>State v. Larivee</u> , 656 N.W.2d 226 (Minn. 2003) .....	10
<u>Swelbar v. Lahti</u> , 473 N.W.2d 77 (Minn. App. 1991) .....	15
<u>Tuma v. Commissioner of Econ. Sec.</u> , 386 N.W.2d 702 (Minn. 1986).....	10, 17
<u>U.S. v. Sinskey</u> , 119 F.3d 712 (8th Cir. 1997) .....	11
<u>United States v. Camp</u> , 541 F.2d 737 (8th Cir. 1976) .....	11
<u>Wegener v. Commissioner of Revenue</u> , 505 N.W.2d 612 (Minn. 1993).....	18
<u>Westbrock v. Marshalltown Manufacturing Co.</u> , 473 N.W.2d 352 (Minn. App. 1991) .....	13

**STATUTES & RULES**

1963 Minn. Laws Ch. 93 § 1 .....	7
1999 Minn. Laws Ch. 106 § 1 .....	16
Minn. Stat. § 169.685.....	1-5, 7-9, 12, 17
Minn. Stat. § 645.08.....	11
Minn. Stat. § 645.16.....	10, 17-19

## STATEMENT OF THE LEGAL ISSUE

Under Minnesota's "seat belt gag rule," Minn. Stat. § 169.685, subd. 4(a) (2000), evidence of "installation or failure of installation" of child safety seats is not admissible in a lawsuit for personal injuries from a motor vehicle accident. The Legislature crafted a narrow exception to that rule, allowing such evidence in a product liability claim for defective design, manufacture, installation, or operating of a child safety seat. See Minn. Stat. § 169.685, subd. 4(b) (2000).

Minor Ted Harrison Jr. was injured when he was thrown from his car seat in a car accident. He sued and settled a claim against the manufacturer of the car seat for defective design. He then separately sued his parents for negligently installing and maintaining the car seat.

Does the gag rule exception for product liability claims apply to Ted Harrison Jr.'s claim against his parents?

**The district court ruled that the claim against his parents could proceed "as it is an action arising out of an incident that involves a defectively designed, and defectively installed child seat."**

### **Apposite authority:**

Minn. Stat. § 169.685

Marsden v. Crawford, 589 N.W.2d 804 (Minn. App. 1999).

## STATEMENT OF THE CASE

This appeal arises out of a personal injury lawsuit. Respondent Ted Harrison Jr. was injured when he was released from his car seat in a automobile accident. He sued the car seat manufacturer for the defective design of the car seat, and settled that claim at the beginning of trial. Then, in a separate lawsuit, he sued his parents, Appellants Amy Harrison and Ted Harrison Sr., for negligence, specifically negligent maintenance and installation of the car seat.

The parties' cross motions for summary judgment presented the narrow question of whether Minnesota's so-called "seat belt gag rule" applies to this case. Under Minn. Stat. § 169.685, subd. 4(a), evidence of "installation or failure of installation" of child safety seats is not admissible in a lawsuit for personal injuries from a motor vehicle accident.

A narrow exception to the seatbelt gag rule is found in Section 169.685, subd. 4(b), which states that the gag rule does not prohibit the introduction of evidence pertaining to the use of a child safety seat in a product liability action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating child safety seat.

The district court ruled that Respondent's claim against his parents is "unimpaired by the gag rule as it is an action arising out of an incident that involves a defectively designed, and defectively installed child seat." A.17.

The parties stipulated to damages and the district court entered judgment against Appellants in the amount of \$100,000. This appeal follows.

### **STATEMENT OF FACTS<sup>1</sup>**

#### **A. Accident and injury**

On April 19, 2001, Respondent Ted Harrison Jr. ("Respondent"), then age three, was a passenger in a motor vehicle ("Harrison vehicle") driven by his mother, Appellant Amy Harrison. Respondent was seated directly behind the

---

<sup>1</sup> The parties submitted their cross motions for summary judgment on stipulated facts. A.12.

front passenger seat in a child safety seat, also known as a “child passenger restraint system.” A.7. For reasons unknown, another vehicle veered to the left of the roadway and in trying to get back on course, he overcorrected and entered Amy Harrison’s lane hitting the Harrison vehicle. Id. This caused the Harrison vehicle to leave the roadway and to roll over several times. The Harrison vehicle came to rest upright in the ditch. Id. During the collision and rollover, Respondent was released from his car seat, ejected from the Harrison vehicle, and injured. Id.

**B. Car seat**

The car seat was purchased new for Respondent by his parents, Appellants Amy and Ted Harrison, Sr. (“Appellants”) in 1999. Id. This style of car seat utilizes a two-slotted buckle mechanism that is situated in the seat bottom between the child’s legs. Id. On the day of the accident, Ted Harrison placed Respondent in his car seat and inserted the seat’s harness tongue or latch plate into the outbound of the two slots. Id. The inbound slot had not been used for many months. Id.

After an investigation and reconstruction of the accident, the Minnesota State Patrol determined that the harness tongue of the child seat could be pulled free of the outbound buckle slot even though the buckle mechanism had seemed to “click” into place when the tongue had been inserted into the outbound buckle slot. Id. The State Patrol ultimately discovered a U.S. Quarter lodged into the unused inbound slot of the buckle mechanism that caused this

false latch phenomenon. Id. The investigating State Patrol officer noted dirt and debris on the quarter and concluded that the quarter had been in the buckle mechanism for some time. Id.

**C. Product liability claim asserted against car seat manufacturer**

A separate product liability claim was asserted on Respondent's behalf against Century Products Company in which it was alleged that Respondent's ejection from his car seat and the Harrison vehicle and resulting injuries were the result of defects in the design of the car seat. That claim was settled at the commencement of trial. Id.

**D. Negligence claim asserted against parents**

Ted Harrison was primarily responsible for the maintenance and placement of Respondent's car seat into the vehicle. Id. He cleaned out the car seat approximately twice per week by removing the car seat from the vehicle and wiping it and/or shaking it out. He had last cleaned Respondent's car seat just a few days before the accident. Id. Ted Harrison knew from the Century Products child seat instruction manual to keep debris out of the buckle slots. Id. Ted Harrison knew that the vehicle shoulder/lap belt restraint harness had to be converted from the emergency locking mode to the automatic locking mode. Id. Ted typically installed the car seat by pulling the vehicle seat belt all the way out, threading it through the back of the car seat, and latching it into the vehicle buckle mechanism. Id. The Harrison vehicle seat belt would then click as it reentered the vehicle seat belt retractor, indicating the vehicle seat belt

was locked into place. Id. Ted Harrison would lean his body weight onto the car seat to ensure that the vehicle seat belt retracted as far as possible into its retractor. Id. After the vehicle seat belt was locked, he would make sure everything was tight by attempting to move the child seat. Id. Ted Harrison had placed Respondent's seat back into the Harrison vehicle after having finished cleaning it just a few days before the accident and had been the one who secured Respondent in the car seat the day of the accident. Id.

Ted Harrison put Respondent into his child seat by placing him into the seat, pulling the seat's harness with the attached tongue over Respondent's head, and securing the tongue into the outbound buckle slot, which "clicked." Id. For purposes of the parties' cross motions for summary judgment only, the parties agreed that Appellants were negligent in the maintenance of the car seat by failing to discover and remove the coin from the buckle mechanism, and in the installation of the car seat by failing to convert the harness to the automatic locking mode and failing to confirm the buckle tongue was securely latched by pulling up adequately on the harness. Id.

### **STANDARD OF REVIEW**

Because the material facts are undisputed, the issue is whether the trial court erred in its application of the law. See Herrmann v. McMenemy & Severson, 590 N.W.2d 641, 643 (Minn. 1999). This Court need not defer to the trial court's determination of a question of law. Frost-Benco Electric Ass'n v. Minnesota Public Utilities Comm'n, 358 N.W.2d 639, 642 (Minn. 1984). The

construction of statutory provisions is a question of law, which this Court reviews de novo. Minnesota Citizens Concerned for Life, Inc. v. Kelley, 698 N.W.2d 424, 427 (Minn. 2005).

## ARGUMENT AND AUTHORITIES

### I. THE GAG RULE EXCEPTION FOR PRODUCT LIABILITY CLAIMS DOES NOT APPLY TO A PARENT'S ALLEGED NEGLIGENCE IN PLACING A CAR SEAT INTO THE BACKSEAT OF A VEHICLE AND STRAPPING HIS CHILD INTO IT.

The narrow exception to the gag rule works to allow evidence of seat belt or car seat use in product liability cases for defective design, manufacture, installation, or operation. Respondent has sued his parents under a negligent installation theory.

The district court's order ruling that the car seat evidence was admissible under the gag rule exception must be reversed. First, the plain language of the exception specifies that only in cases where the installation is "defective" is evidence relating to seat belts and car seats admissible. The claim against Appellants is for negligent installation and maintenance – not defective installation. The gag rule itself states that evidence of "installation or failure of installation" may not be admitted. Failure of installation is the legal equivalent of negligent installation – bringing it under the auspices of the gag rule, not the exception. The exception applies only to defective installations – a term which denotes a product liability context in Minnesota case law. The term by its plain

meaning does not apply to a parent placing a car seat in the back seat and strapping a child into the seat.

Second, to the extent that there is any ambiguity in the text of the statute, the circumstances under which it was enacted, the Legislative history, and the absurd result this case would produce all show that the Legislature intended the exception to be for product liability cases only.

Importantly, Respondent sued and settled a separate claim against the car seat designer and manufacturer. Because the gag rule exception for product liability claims does not and should not apply to a claim for a parent's alleged error in using a car seat, Appellants Ted Harrison, Sr. and Amy Harrison respectfully request that the Court reverse the decision of the district court and rule that the car seat evidence is not admissible in this lawsuit.

**A. History of the gag rule and its exception**

**1. Legislature enacts seat belt gag rule**

The Legislature enacted Minn. Stat § 169.685 in 1963. See 1963 Minn. Laws Ch. 93 § 1. Subdivision 4 of this statute contained what is commonly referred to as "the seat belt gag rule." See Olson v. Ford Motor Co., 558 N.W.2d 491, 493 (Minn. 1997). Prior to legislative action in 1999, the statute provided as follows:

Proof of the use or failure to use seat belts or a child passenger restraint system as described in subdivision 5, or proof of the installation or failure of installation of seat belts or a child passenger restraint system as described in subdivision 5 shall not be admissible

in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

Minn. Stat. § 169.685, subd. 4 (1998). The seat belt gag rule effectively precludes claims based upon the use or non-use of seat belts because such evidence cannot be admitted.

## 2. Supreme Court issues Olson v. Ford decision

In 1997 the Minnesota Supreme Court decided Olson v. Ford Motor Co., 558 N.W.2d 491 (Minn. 1997). Kyle Olson was injured in an automobile accident and brought a product liability action against Ford, alleging that he was wearing the factory-installed seat belt at the time of the collision and that the seat belt failed. Ford moved for summary judgment, arguing that under the gag rule, the seat belt evidence was inadmissible. Id. at 493. Olson argued that the evidence should be admissible in a “crashworthiness” lawsuit against the auto manufacturer, because the purpose of the rule was to protect motorist plaintiffs from being penalized for contributory negligence for failure to wear a seat belt. Id. at 493-94.<sup>2</sup>

The Supreme Court agreed with Ford, holding that the plain language of the gag rule precluded the introduction of evidence of Olson’s use of the seat belt at the time of the accident. Id. at 494-96. The Court stated that it was

---

<sup>2</sup> Olson followed several cases in which courts in this state determined “crashworthiness” claims were barred by the seat belt gag rule. See, e.g., Schlotz v. Hyundai Motor Co., 557 N.W.2d 613 (Minn. App. 1997); Anker v. Little 541 N.W.2d 333 (Minn. App. 1995). See also Carlson v. Hyundai Motor

unclear whether the gag rule was actually enacted to protect motorist plaintiffs from being penalized for contributory negligence for failure to wear a seat belt. Id. at 495. The Court noted that the law was drafted in conjunction with a rule requiring manufacturers to provide mandatory seat belts in all cars at a time when the efficacy of seat belt use was still disputed, and as such, may have been enacted to shield manufacturers from lawsuits for injuries caused by state-mandated seat belts. Id. The Court then explicitly suggested that the Legislature review the “continuing desirability” of the gag rule, given the evidence that seat belts actually provide protection from injury. Id. at 496.

### **3. Legislature enacts product liability exception to gag rule**

In 1999, in response to Olson, the Legislature amended the gag rule with a limited exception:

Paragraph (a) does not affect the right of a person to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system. Paragraph (a) does not prohibit the introduction of evidence pertaining to the use of a seat belt or child passenger restraint system in an action described in this paragraph.

Minn. Stat. § 169.685, subd. 4(b). In passing the amendment, a legislator made the following comment for the legislative record:

[T]his bill deals with the statutes dealing with the admissibility of evidence regarding the use of seatbelts and passenger restraints. Current law provides that this evidence is not admissible in any litigation involving personal injuries or property damage arising out of the operation and use of a motor vehicle. The bill would provide

---

Co., 164 F.3d 1160 (8th Cir. 1999) (holding under Minnesota’s gag rule, crashworthiness claim for defective seat belt barred).

an exception in **products liability cases** involving a defective seatbelt or passenger restraint system and in those case (sic) the law would not prohibit the introduction of evidence pertaining to the use of the seatbelt or a child passenger restraint system in the action. ... as you recall right after we started the discussion on this bill in 1997 the Supreme Court in the case of Kyle Olson v. Ford Motor Company. It held that the introduction of seatbelt use was inadmissible. The law was clear and therefore we couldn't use that kind of evidence to sustain an action against a party even though there was evidence to support the fact that **the seatbelt or the child restraint system was defective.**

A.27-28. (Sen. Leo T. Foley, Senate Judiciary Committee Meeting (March 8, 1999))(emphasis added). In light of Olson and the legislative history, the exception was crafted specifically to allow **product liability** cases regarding seat belts to go forward. The Legislature rejected the Olson court's suggestion that the entire seat belt gag rule be thrown out and chose to only carve out a narrow exception for cases involving product liability claims.

**B. The gag rule exception is for product liability claims, not claims for a parent's alleged negligence in placing a child into a car seat.**

**1. The unambiguous meaning of the text of the statute is that the gag rule exception applies only to defective installation. The claim against Appellants is for "negligent" installation, not "defective" installation, and thus evidence of Appellants' installation and maintenance of the car seat is inadmissible.**

Clear and unambiguous words in a statute must be given their plain meaning. Minn. Stat. § 645.16; Tuma v. Comm'r of Econ. Sec., 386 N.W.2d 702, 706 (Minn. 1986). Statutes must be interpreted so that no word, phrase, or sentence is made superfluous, void, or insignificant. See State v. Larivee, 656

N.W.2d 226, 229 (Minn. 2003). In construing statutes, “words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning [...] are construed according to such special meaning or their definition.” Minn. Stat. § 645.08 (1).

It is a standard rule of grammar that an adverb at the beginning of a list of verbs modifies the entire list of verbs. See e.g., U.S. v. Sinskey, 119 F.3d 712, 717 (8th Cir. 1997)(in statute penalizing person who “knowingly falsifies, tampers with, or renders inaccurate...,” the adverb “knowingly” precedes and explicitly modifies the verbs in the sentence); United States v. Camp, 541 F.2d 737, 740 (8th Cir.1976) (in statute outlawing one who “willfully, knowingly, and unlawfully resisted, opposed, impeded, intimidated and interfered with” a postal inspector, the adverbs modify all the verbs). See also Ladner v. United States, 358 U.S. 169, 176 & n. 4, 79 S. Ct. 209, 213 & n. 4, 3 L.Ed.2d 199 (1958).

**a. This claim is for negligent installation, not defective installation.**

The exception allows claims for and evidence of “defectively designed, manufactured, installed, or operating seat belt or child passenger restraint systems.” General words are construed to be restricted in their meaning by preceding particular words. Minn. Stat. § 645.08 (3). Therefore, “defectively” is read as to modify designed, manufactured, installed, or operating. This means that the exception applies only if it involves a defectively designed, defectively

manufactured, defectively installed, or defectively operating seat belt, or a defectively designed, defectively manufactured, defectively installed, or defectively operating child passenger restraint system. Thus, in order to qualify under the exception, this must be a claim for defective installation.<sup>3</sup>

By artfully constructing his claim as one for “negligent installation,” Respondent has attempted to subvert the law and transform this case into a product liability case that is allowed under Minn. Stat. § 169.685, subd. 4(b). But the exception very clearly does not apply to every negligent installation. The gag rule itself states that no evidence of “installation or failure of installation” is admissible. See Minn. Stat. § 169.685, subd. 4(a). Because they are the subject matter of the rule and exception, respectively, “failure of installation” must mean something different than “defective installation.” If this were not so, the exception would swallow the rule. Respondent’s claim for negligent installation must fall within the rule for “failure to install,” rather than the exception for “defective installation.”

Defective installation is not legally equivalent to negligent installation because the term “defective” is used nearly exclusively in the context of product liability, especially when coupled with the verbs “designed, manufactured, installed or operated.” “Defective” is defined as: “a. imperfect in form or function : FAULTY <a defective pane of glass> b : falling below the norm in

---

<sup>3</sup> Respondent’s claim against Appellants is for negligent installation and maintenance. A.10. Since the term “maintenance” is not mentioned in the gag

structure or in mental or physical function <defective eyesight>.” See Merriam Webster Online Dictionary (Merriam-Webster, Inc. 2004). In Fiveland v. Bollig & Sons, Inc., 436 N.W.2d 478 (Minn. App. 1989), this Court held that it would be likely the Minnesota Supreme Court would use a common sense or ordinary definition of defective. Id. at 480. The Fiveland Court noted:

The ordinary meaning of "defective" is "having a defect or defects; incomplete; faulty." Webster's New Universal Unabridged Dictionary, 475 (2d ed. 1983). "Defect," in turn, is defined as "1. lack or absence of something necessary for completeness; shortcoming. 2. an imperfection; fault \* \* \*." Id.

Fiveland, 436 N.W.2d at 480. The ordinary sense, in fact, relates to product liability. See, e.g., Westbrook v. Marshalltown Mfg. Co., 473 N.W.2d 352, 356 (Minn. App. 1991) (establishing elements of a product liability claim requires that "(1) the product was in a defective condition, unreasonably dangerous to the user, (2) the defect existed when the product left the manufacturer's control, and (3) causation").

The word "defective" has a technical meaning in this statute. It does not mean negligent. If "defective" meant mere negligence, it could apply to any use or installation under any circumstances. Moreover, the gag rule itself dictates that no evidence of "installation or failure of installation" may be admitted. To equate negligent installation with defective installation negates the meaning of the word defective, and brings into the exception any car seat installation case.

---

rule exception, the focus here is entirely on the claim for negligent installation.

Clearly the Legislature chose to add the word defective for a reason -- the very basis of the exception was that while proof of installation was not admissible, proof of defective installation was. The word defective must be given meaning and effect.

Because Respondent's claim is based upon negligent installation, and not defective installation, the gag rule operates to exclude all evidence relating to the car seat.

- b. The phrase "defective installation" cannot and should not be stretched to apply to a parent placing a car seat in an automobile, and strapping his child into it.**

Moreover, the plain meaning of the phrase "defective installation" cannot be expanded to cover a parent placing a car seat in an automobile, and strapping his child into it. The plain meaning of "install" is "to set up for use or service <had an exhaust fan installed in the kitchen>." See Merriam Webster Online Dictionary (Merriam-Webster, Inc. 2004).

Importantly, to determine the true nature of a legal theory, a Court must look to the "gist" of a claim rather than the label a party puts on allegations. See Franklin v. Western National Mutual Ins. Co., 574 N.W.2d 405, 407 (Minn. 1998). This Court should reject Respondent's attempt to subvert the clear law of the gag rule statute. In the context of "defectively installed," a legal term in the area of product liability, the meaning relates to a one-time, permanent action done improperly so as to cause harm or danger and does not equate with

ongoing use. See, e.g., City of Coon Rapids v. Suburban Engineering, Inc., 283 Minn. 151, 167 N.W.2d 493 (1969) ("defective installation of a storm sewer").<sup>4</sup>

The stipulated facts here are that Appellant Ted Harrison Sr. cleaned out the car seat approximately twice per week by removing the car seat from the vehicle and wiping it and/or shaking it out, and had last cleaned it just a few days before the accident. A.9. This hardly constitutes the type of "installation" contemplated by the narrow statutory exception to the gag rule for a defective installation.

The gag rule has been applied to accidents where children are injured in automobiles. In Swelbar v. Lahti, 473 N.W.2d 77 (Minn. App. 1991), eighteen-month-old Jessica Brigan was killed in a traffic accident. A trustee for her next of kin sued the driver and owner of the other car in the collision. The defendants alleged that Jessica was being held by a front seat passenger in the Brigan car and was not in a car seat. This Court held that evidence of whether Jessica was in a car seat was inadmissible under the gag rule, Section 169.685, even though the alleged conduct violated Minnesota law. Id. at 79-80.

---

<sup>4</sup> See also Gess v. Sill, 312 Minn. 288, 251 N.W.2d 650 (1977) ("defective installation" of a well); Farnham v. Nasby Agri-Systems, Inc., 437 N.W.2d 759, 759 (Minn. App. 1989) ("defective installation and design of a grate covering a grain auger"); Rettman v. City of Litchfield, 354 N.W.2d 426, 428 (Minn. 1984) ("defective installation of the water main"); O'Laughlin v. Minnesota Natural Gas Co., 253 N.W.2d 826, 826, 828 (Minn. 1977) ("defective installation of the furnace").

Despite the potential for harsh consequences in a particular case, the gag rule's bar to admitting evidence has been upheld. In Marsden v. Crawford, 589 N.W.2d 804 (Minn. App. 1999), day care provider Crawford was carrying three-year-old Riley Marsden in the backseat of her car when the car was struck from behind by another automobile. Id. at 805-806. Riley suffered a serious traumatic brain injury. Id. Riley's mother brought a breach of contract action against Crawford for failing to utilize a child restraint system, as agreed in her day care contract. The Court of Appeals held that the gag rule barred this evidence in support of the mother's action, even though the mother pled her claim as a contract action in an attempt to avoid the effect of the gag rule. Id. at 807.

Notably, the Legislature created the exception to the gag rule after Marsden was decided<sup>5</sup> – with the Legislature fully aware of the consequences of the gag rule on lawsuits for tragic accidents like those underlying Swelbar and Marsden. Still, the Legislature declined to accept the Supreme Court's invitation in Olson to repeal the rule altogether. Instead, the Legislature crafted a narrow exception limited to product liability cases. In any case, even if Swelbar and Marsden had been decided after the Legislature amended the gag rule, the results would have been the same -- Swelbar and Marsden were not

---

<sup>5</sup> This Court decided Marsden on March 2, 1999. The gag rule exception was enacted on May 17, 1999 and became effective on May 18, 1999. See 1999 Minn. Laws Ch. 106 § 1; 2.

product liability cases, they were cases in which the alleged bad act was of an adult entrusted to safely transport a child in an automobile and the exception would not apply.<sup>6</sup> An exception for cases involving “defectively designed, manufactured, installed, or operating” car seats does not work to allow such claims or evidence.

This is not a claim such as Olson against a vehicle manufacturer or a defective design case against the manufacturer of the car seat, but a claim against Respondent’s parents for negligently failing to secure the child seat into the vehicle. The allegations against Appellants are similar to those in Swelbar and Marsden -- claims for negligence regarding the “use” or “non-use” of a child restraint system. Under the plain language of Minn. Stat. § 169.685, Respondent’s claim and the evidence he seeks to admit are barred.

**C. Legislative intent indicates the exception applies to product liability cases only.**

Courts interpret statutes to ascertain and effectuate legislative intent. Minn. Stat. § 645.16. If there is no ambiguity in the language of the statute, courts should look to the plain meaning of that language. Tuma, 386 N.W. 2d at 706. If, however, the statute is ambiguous or its literal meaning leads to an absurd result that is directly contrary to the Legislature’s intent, courts may go

---

<sup>6</sup> It is worth noting that a KeyCite review shows that both Swelbar and Marsden remain “good law” and does not indicate that they have been overruled by statute.

beyond that plain meaning and look for other evidence of legislative intent. See Wegener v. Commissioner of Revenue, 505 N.W.2d 612, 617 (Minn. 1993).

As noted, the text of the statute unambiguously limits the gag rule exception to product liability cases. Additionally, the legislative intent shows that the rule was meant to be applied only to product liability actions.

The intention of the Legislature may be ascertained by considering, among other matters: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and 8) legislative and administrative interpretations of the statute. Minn. Stat. § 645.16.

- 1. The occasion and necessity for the law, the circumstances under which it was enacted, and the previous statute all indicate that the exception applies only to product liability claims.**

The Legislature's intent to create only an exception for product liability claims can be discerned from the occasion and necessity for the amendment, the circumstances under which it was enacted, and the previous statute. The Legislature enacted the gag rule exception in response to the Supreme Court's decision in Olson v. Ford. In enacting the exception, the Legislature rejected the Court's suggestion that the rule be repealed in its entirety – indicating that

they wished for the gag rule to stand, except in the cases of “crashworthiness” product liability claims such as Olson.

Notably, the exception was enacted just after Marsden was decided by this Court. If the Legislature wanted to allow such claims, either under a breach of contract theory or otherwise, they could have repealed the gag rule entirely or broadened the exception they enacted. They did not.

As Sen. Foley stated in the Legislative record, the bill provided “an exception in products liability cases involving a defective seatbelt or passenger restraint systems.” A.27-28 (emphasis added). Sen. Foley went on to note that the bill would allow evidence of a “seatbelt or the child restraint system [that] was defective” – specifying a particular product that a party could be now held liable for.

The addition of the exception to the gag rule indicated a narrow change in law – adding a viable claim for defective installation where no claim existed for ordinary “installation or failure of installation.”

Each of these factors from Section 645.16 indicates the intent of the Legislature was to create a narrow exception for product liability cases only.

**2. Respondent’s interpretation of the exception creates an absurd result.**

Respondent’s interpretation of the seat belt gag rule exception in this case leads to an absurd result. See Minn. Stat. § 645.16 (6). Expanding the exception as Respondent proposes would necessarily remove child restraint

systems entirely from the seat belt gag rule because every child restraint system is “installed” into a vehicle when it is used.

Respondent’s viewpoint would necessarily mean that evidence of use, as well as non-use, of a child restraint system in any accident would become admissible simply because the parents installed the car seat. This does not only go beyond the legislative intent, it is in direct contradiction to that intent.

Respondent’s equating the term “defective installation” with securing the child into the car seat and the car seat into the vehicle, something every person necessarily must do if they use a car seat, would effectively render the gag rule inapplicable in cases involving the use of a child restraint system. The exception would swallow the rule. Moreover, even if Respondent contends that securing the child into the car seat and into the vehicle in this case constituted a defective installation, there seems to be no end to the application of the rule.

For example, under Respondent’s interpretation of the exception to the gag rule, each of the following circumstances fall under the exception:

- Evidence that a person failed to use any car seat at all and used the regular seat belts would be admissible because it constituted a defective “installation” of a child restraint system;
- Evidence that a person tied the seat belts together instead of using the clasps would be admissible because it constituted a defective “installation” of a child restraint system;
- Evidence that a person placed a car seat in facing backwards or forwards would be admissible because it constituted a defective “installation” of a child restraint system;

- Evidence that a person placed a car seat in the front seat instead of the back seat would be admissible because it constituted a defective “installation” of a child restraint system;
- Evidence that a person “installed” a lower quality or a higher quality car seat would be admissible because it constituted a defective “installation” of a child restraint system.

Considering that a child seat must always be secured into the vehicle before use, under Respondent’s interpretation, there does not seem to be any circumstance where the use or non-use of a car seat would not constitute “a defective installation” of a child restraint system. This would make the seat belt gag rule essentially inapplicable in almost every case involving child restraint systems. Given that the Legislature did not take out the phrase “child restraint system” from subd. 4(a) when they added 4(b), and given that the Legislature specifically expressed its intent that this narrow exception was to address the problem presented in Olson regarding product liability claims against manufacturers of child passenger restraint systems or seat belts, Respondent’s interpretation is unreasonable and unsupported by the law and the record.

### **CONCLUSION**

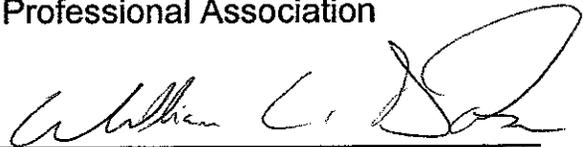
The plain language of the gag rule and its exception dictates that Respondent’s claim for “negligent installation” falls under the gag rule, which prohibits the introduction of evidence of “failure to install.” The term “defective installation” denotes a product liability context in Minnesota, and the narrow exception may not be stretched to apply to a parent placing a car seat in the back seat and strapping his or her child into the seat.

In addition, the circumstances under which the exception was enacted, the Legislature's comments at the time of its enactment, and the absurd result this case would produce all show that the Legislature intended the exception to be for product liability cases only.

Because the gag rule exception for product liability claims does not and should not apply to a claim for a parent's alleged error in placing a car seat into an automobile, Appellants Amy and Ted Harrison, Sr. respectfully request that the Court reverse the decision of the district court, rule that the car seat evidence is not admissible in this lawsuit, and order entry of judgment for Appellants.

Respectfully submitted,

Lind, Jensen, Sullivan & Peterson  
A Professional Association



---

Brian A. Wood, # 141690  
William L. Davidson, # 201777  
Sara J. Lathrop, # 0310232  
Attorneys for Appellants  
150 South Fifth Street, Suite 1700  
Minneapolis, Minnesota 55402  
(612) 333-3637

Dated: July 26, 2005

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).