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 NO. A05-1038
 

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State of Minnesota  
 In Supreme Court

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

*Respondent,*

v.

Amy and Ted Harrison, Sr.,

*Appellants.*

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**APPELLANTS' BRIEF AND APPENDIX**

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## STATEMENT OF LEGAL ISSUE

The "seat belt gag rule," Minn. Stat. § 169.685, subd. 4(a), prohibits the admission into evidence of the use of or installation of a child passenger restraint system in any litigation involving personal injuries resulting from the use or operation of a motor vehicle. This Court has determined that the gag rule is unambiguous and applied it to bar the introduction of evidence of use of a seat belt and essentially preclude a product liability, crashworthiness case.

In response, the Legislature in 1999 enacted an exception, Minn. Stat. § 169.685, subd. 4(b), which states that the gag rule "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" child passenger restraint system. The exception also states that the gag rule "does not prohibit the introduction of evidence pertaining to the use of a . . . child passenger restraint system in" such an action.

Does the gag rule apply to preclude the admission of evidence in a separate action for personal injuries brought against parents for their alleged negligent installation and maintenance of a child passenger restraint system, or does the exception apply to allow a separate action and permit the introduction of evidence in the separate action?

### **Decision below:**

The Court of Appeals, affirming the decision of the district court, concluded that the exception applies and that it: is unambiguous and therefore contrary legislative history would not be considered; is not limited to product liability actions; and, permits a separate personal injury negligence action and the introduction of evidence in support of such an action.

### **Most apposite authority:**

Minn. Stat. § 169.685

*Olson v. Ford*, 558 N.W.2d 491 (Minn. 1997)

*Wegener v. Commissioner of Revenue*, 505 N.W.2d 612 (Minn. 1993)

## STATEMENT OF THE CASE

This appeal concerns a personal injury lawsuit that resulted from a motor vehicle accident. Respondent Ted Harrison Jr. was injured in a rollover accident when he was released from his car safety seat and ejected from the car. Through a guardian ad litem, he brought a product liability action against the manufacturer of the car seat, claiming it was defectively designed. He settled with the manufacturer at the start of trial. In that same action, he also sued the owner and driver of the uninsured car that struck his parents' car and caused the accident.

In this separate negligence action, Respondent then sued his parents, Appellants Amy Harrison and Ted Harrison Sr., claiming they negligently installed and maintained the car seat. A.12 (Complaint, ¶ V); A.18 (Stipulation, ¶ 10). The parties brought cross-motions for summary judgment on stipulated facts to address the legal question whether Minnesota's "seat belt gag rule" applies to this case.

Under Minn. Stat. § 169.685, subd. 4(a), evidence of proof of "the use" or "installation or failure of installation" of a child safety seat is not admissible "in any litigation involving personal injuries . . . resulting from" a motor vehicle accident. An exception enacted in 1999, Section 169.85, subd. 4(b), states that the gag rule does not affect the right of a person to bring an action and does not prohibit the introduction of evidence pertaining to the use of a child safety seat in "an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating" child safety seat.

The District Court gave the exception a broad reading and ruled that Respondent's action 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.28. The parties stipulated to damages and the district court entered judgment against Appellants.

The Court of Appeals affirmed. *Harrison v. Harrison*, 713 N.W.2d 74 (Minn. Ct. App. 2006), A.1. It concluded the statute was unambiguous and that contrary legislative history would not be considered. *Id.* at 79. It decided the exception was not limited to product liability actions. *Id.* at 78. It held that Respondent's personal injury negligence action against his parents could be brought, and that evidence in support of a separate negligence action was permitted. *Id.* at 79.

## STATEMENT OF FACTS

### Accident and injury

In April 2001, Respondent Ted Harrison Jr. ("Respondent"), then age three, was a passenger in a motor vehicle ("Harrison vehicle") his mother Appellant Amy Harrison was driving. Respondent was seated directly behind the front passenger seat in a car seat or child safety seat, also known as a "child passenger restraint system." A.18 (¶ 1). Another driver lost control and entered Amy Harrison's lane, hitting her vehicle. *Id.* The impact caused her vehicle to leave the road and to roll over several times. *Id.* (¶ 2). During the collision and rollover, Respondent was released from his car seat, ejected from the vehicle, and injured. *Id.*

### **Alleged defective car seat**

Appellants Amy Harrison and Ted Harrison, Sr. (“Appellants”) purchased the car seat in 1999. *Id.* (¶3). This style of car seat uses a two-slotted buckle mechanism that is located in the seat bottom between the child’s legs. *Id.* On the day of the accident, Ted Harrison, Sr. placed his son in the 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.*

The Minnesota State Patrol investigated and reconstructed the accident. *Id.* (¶ 4). They observed that the harness tongue of the car seat could be pulled free of the outbound buckle slot even though the buckle mechanism had seemed to “click” into place when the tongue was inserted into the outbound buckle slot. *Id.* The State Patrol ultimately discovered a quarter lodged in the unused inbound slot of the buckle mechanism that caused this false latch phenomenon. *Id.* (¶5). The investigating State Patrol officer noted dirt and debris on the quarter and concluded that it had been in the buckle mechanism for some time. *Id.*

### **Product liability action against the car seat manufacturer**

Respondent brought a separate product liability action against Century Products Company (“Century Products”), seeking damages and alleging that his ejection from the Harrison vehicle was due to defects in the car seat’s design. That claim was settled at the start of trial. *Id.* (¶ 6).

### **Personal injury action against parents**

Ted Harrison, Sr. was primarily responsible for the maintenance and installation of Respondent's car seat into the vehicle. *Id.* (§§7-8). He cleaned out the car seat approximately twice per week by removing it from the vehicle and wiping it and/or shaking it out. He last cleaned the car seat just a few days before the accident. *Id.* Ted Harrison, Sr. knew from Century Products' instruction manual to keep debris out of the buckle slots. *Id.* Ted Harrison, Sr. knew that the vehicle shoulder/lap belt restraint harness had to be converted from the emergency locking mode to the automatic locking mode. *Id.* He 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 seat belt would then click as it reentered the vehicle's seat belt retractor, indicating the seat belt was locked into place. *Id.* Ted Harrison, Sr. 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 car seat. *Id.*

Ted Harrison, Sr. put Respondent into his car 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.* (§9). For purposes of the parties' cross motions for summary judgment, the parties agreed that Appellants were negligent in the maintenance of the car seat (by failing to discover and remove the quarter 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.* (¶ 10).

### STANDARD OF REVIEW

Because the material facts are undisputed, the issue on appeal is whether the courts below erred in their construction of Minnesota's statutory gag rule, a question of law that this Court reviews de novo. *See Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 698 N.W.2d 424, 427 (Minn. 2005). This Court is not bound by and need give no deference to lower courts on questions of law. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2000).

### SUMMARY OF ARGUMENT

Respondent's separate action against his parents for their alleged negligent installation and maintenance of a car seat falls squarely within the broad prohibition of Minnesota's "seat belt gag rule." The Legislature rejected calls to repeal the gag rule entirely and specifically reaffirmed its intent to prohibit evidence of use or failure to use seat belts or car seats in ordinary motor vehicle personal injury litigation. The exception the Legislature crafted to the gag rule in response to several unsuccessful product liability actions does not apply to allow Respondent's separate action against his parents or to allow evidence pertaining to the use of a car seat in this action.

The Court of Appeals erred in the broad construction given to the exception, a construction that failed to read the statute in its entirety or give proper consideration to the unambiguous prohibition of evidence of use or installation of a car seat in personal injury motor vehicle litigation. The undisputed legislative intent is that such evidence remains

inadmissible, except in actions for damages for defective car seats. The legislative intent may properly be considered, either because the exception is ambiguous or because the literal words of the exception create an absurd result that directly contradicts the undisputed legislative intent.

## ARGUMENT AND AUTHORITIES

### I. History of Minnesota's gag rule and its exception.

#### A. The Legislature enacts a seat belt gag rule.

The Legislature enacted Minn. Stat § 169.685 over forty years ago. *See* 1963 Minn. Laws Ch. 93 § 1. The 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).

Before the Legislature's response to *Olson*, the statute provided in part 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).<sup>1</sup> The seat belt gag rule effectively precludes claims based upon the use or failure of seat belts or car seats because such evidence is not admissible.

#### B. This Court decides *Olson v. Ford*.

In *Olson v. Ford Motor Co.*, 558 N.W.2d 491 (Minn. 1997), this Court examined the gag rule. Kyle Olson was injured in an automobile accident and he claimed that the

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<sup>1</sup> Car seats were added to the gag rule in 1981. 1981 Minn. Laws Ch. 56 § 1.

factory-installed seat belt he wore at the time of the collision was negligently designed and manufactured. He brought a crashworthiness action against Ford, asserting strict liability, negligence, and breach of warranty theories. Ford moved for summary judgment, arguing that under the gag rule, seat belt evidence was inadmissible. *Id.* at 493.<sup>2</sup>

This Court concluded that the statutory language was unambiguous. *Id.* at 494. This Court answered the certified question and held 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. This Court rejected Olson's argument that barring the admission of seat belt evidence led to an absurd result. *Olson* stated that it was unclear whether the gag rule was actually enacted to protect motorists alone. *Id.* at 495. This Court noted that the gag rule was enacted in conjunction with requirements that manufacturers provide seat belts. This was done when the efficacy of seat belt use was still disputed, and as such, the gag rule may have been enacted to shield manufacturers from lawsuits for injuries resulting from the mandated seat belts. *Id.*

This Court explicitly suggested that the Legislature review the "continuing desirability" of the gag rule given safety advances over the years and the Legislature's

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<sup>2</sup> *Olson* followed other cases where courts rejected similar crashworthiness claims as barred by application of the seat belt gag rule. *See, e.g., Schlotz v. Hyundai Motor Co.*, 557 N.W.2d 613 (Minn. App. 1997) (affirming summary judgment in favor of manufacturer and distributor in product liability action; gag rule applied to bar crashworthiness and defective installation and defective seat back actions); *Anker v. Little*, 541 N.W.2d 333 (Minn. App. 1995) (affirming summary judgment to defendant manufacturer in wrongful death negligence action; gag rule applied to bar crashworthiness action).

subsequent enactment of laws mandating the use of seat belts and car seats. *Id.* at 496.

The Court was troubled that applying the gag rule to exclude evidence would effectively bar Olson's crashworthiness action or other causes of action against manufacturers. *See id.* at 496; *see also id.* at 497-98 (Page, J., concurring specially).

**C. Legislature enacts a product liability exception to the gag rule.**

In 1997, the Legislature attempted to respond to the issues discussed in *Olson* and several other failed product liability cases. The Legislature specifically considered, but rejected, proposals to repeal the gag rule entirely. *See* H.F. 2291, S.F. 2004, 80th Leg. Sess. (Minn. 1997). Instead, the Legislature passed a bill that amended that gag rule to provide a limited exception (the same exception that was ultimately enacted in 1999). *See* S.F. 877, H.F. 1076, 80th Leg. Sess. (Minn. 1997). Governor Carlson vetoed the exception. *See* A.40 (State of Minnesota, *Journal of the Senate*, Eightieth Session 4701 (June 3, 1997)); 1997 Minn. Laws Ch. 211.

The Legislature continued to examine the gag rule, and courts continued to apply the statute to reject product liability claims. *See, e.g., Carlson v. Hyundai Motor Co.*, 164 F.3d 1160 (8th Cir. 1999) (crashworthiness claim for defective seat belt barred under Minnesota's gag rule); *Altimus v. Hyundai Motor Co.*, 578 N.W.2d 409 (Minn. Ct. App. 1998) (affirming dismissal of complaint for injuries allegedly caused by a defective seatbelt restraint system).

In 1999 the Legislature again rejected efforts to repeal the gag rule. Instead, it successfully amended the gag rule to provide an exception (the same one crafted in 1997)

to the broad gag rule codified in Subdivision 4(a):

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). Despite a veto from Governor Ventura, who expressed his objection to the failure to repeal the gag rule, the Legislature successfully overrode the veto. Laws 1999, c. 106; A.41 (State of Minnesota, *Journal of the Senate*, Eighty-First Session 1895 (April 28, 1999)); State of Minnesota, *Journal of the House*, Eighty-First Session 4638 (May 17, 1999).

In passing the exception, one of its authors commented:

[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 **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.38-39. (Sen. Leo T. Foley, Senate Judiciary Committee Meeting (March 8, 1999))(emphasis added); *see also* A.42 (March 12, 1999 *Senate Briefly* 24-25 (report on Senator Foley's presentation on the bill before the Senate Judiciary Committee)).

**II. Respondent's negligence action against his parents is precluded because the unambiguous language of Section 169.685, subd. 4(a) prohibits the admissibility of evidence of proof of the use or proof of the installation or failure to install a car seat.**

Respondent's negligence action against his parents falls directly within the explicit and unambiguous prohibition that the Legislature enacted (and later reaffirmed) concerning the admissibility of certain evidence. In this personal injury action, Respondent seeks damages that resulted from the operation of a motor vehicle and the alleged use or installation (or failure of installation) of a car seat. The gag rule explicitly prohibits admitting this evidence.

Under the gag rule, evidence of proof of use, failure of use, installation, or failure of installation of car seats (and seat belts) is not admissible in any personal injury litigation resulting from the use or operation of a motor vehicle. This is the unambiguous and broad rule set forth in Minn. Stat. § 169.685, subd. 4(a) and it applies to this case. *See Olson*, 558 N.W.2d at 494 (recognizing that the gag rule is a broad and unambiguous statutory preclusion of the admission of certain evidence).

The evidence that Respondent seeks to admit – negligent use or installation of a car seat – falls squarely within the plain meaning of Minn. Stat. § 169.685, subd. 4(a), which prohibits introduction of that evidence. Subdivision 4(a) specifically and unambiguously directs that proof of the use or installation of a car seat “shall not be admissible in evidence in any litigation involving personal injuries . . . resulting from the use or operation of any motor vehicle.” Notably, the Legislature did not alter the explicit prohibition on “proof of the use” or “proof of the installation or failure of installation of” a car seat in ordinary

motor-vehicle personal injury litigation. *See Burck v. Pederson*, 704 N.W.2d 532, 535 (Minn. Ct. App. 2005). The gag rule applies to “any” personal injury motor vehicle litigation. As this Court recognizes, the word “any” is given broad application in statutes. *Hyatt v. Anoka Police Dept.*, 691 N.W.2d 824, 826 & n.1 (Minn. 2005) (citing *Olson*, 558 N.W.2d at 494).

Respondent’s negligence action against his parents depends specifically on evidence of “proof of the use” of the car seat, as well as “proof of the installation or failure of installation” of the car seat. His lawsuit seeks damages for personal injuries that resulted from the use or operation of his parents’ motor vehicle. As such, the gag rule specifically prohibits the evidence Respondent seeks to introduce, *unless* the exception the Legislature added applies. As discussed below, it does not.

**III. The exception the Legislature crafted in Section 169.685, subd. 4(b) does not permit the introduction of evidence of proof of the use or proof of the installation of a car seat in a separate negligence action.**

To succeed, Respondent must establish that his separate negligence action against his parents for their use and installation of the car seat falls within the exception so that the statute’s direct prohibition on the evidence that Respondent seeks to admit does not apply.

In interpreting a statute, the Court’s function is to ascertain and effectuate the intention of the Legislature. Minn. Stat. § 645.16. 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); Minn. Stat. § 645.16 (“Every law shall be construed, if

possible, to give effect to all its provisions”). Certain presumptions exist to guide courts when examining statutes, including that:

- (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable; and,
- (2) the legislature intends the entire statute to be effective and certain.

*See* Minn. Stat. § 645.17. The Court is not required to adopt “a literal construction [that is] contrary to the general policy and object of the statute.” *In re Raynold’s Estate*, 219 Minn. 449, 18 N.W.2d 238, 240-41 (1945).

If a statute is free from all ambiguity, the Court looks only to its plain language. *Tuma v. Commissioner of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986). If a statute is subject to different plausible interpretations, it must be considered ambiguous. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). If the statute is either ambiguous or if the literal meaning of the words of a statute would produce an absurd result, the Court is obligated to look beyond the language to other indicia of legislative intent. *See Wegener v. Commissioner of Revenue*, 505 N.W.2d 612, 617 (Minn. 1993); Minn. Stat. § 645.17(1).

**A. Subdivision 4(b) does not permit a separate negligence action.**

Respondent’s separate negligence action does not fall within the exception to the gag rule, which permits an action for claims involving defective car seats and seat belts. Respondent’s negligence claim does not involve a defective car seat and it was brought separately. The exception does not apply to it.

Subdivision 4(b) did not overrule the explicit and long-standing prohibition against admitting certain evidence. Instead, it created a narrow exception in response to

numerous product liability cases that were dismissed because of the gag rule.

Subdivision 4(b) does two things:

1. it clarifies that “an action” can be brought notwithstanding the prohibition on the admissibility of evidence contained in 4(a); and,
2. it permits the introduction of evidence pertaining to the use of a seat belt or car seat in an action described in the paragraph, *i.e.* an action for defective design, defective manufacture, defective installation, or defective operation of the seat belt or car seat.

Because Respondent’s separate negligence action is not saved by the exception, the direct prohibition of the gag rule applies.

1. Respondent’s claim against his parents is for negligent installation and negligent maintenance of the car seat.

The Court of Appeals’ decision, which concluded that car seat evidence was admissible under the gag rule exception, should be reversed. First, the plain language of the exception specifies that only in cases where the installation is “defective” is evidence relating to car seats admissible. The claim against Appellants was for negligent installation and maintenance – not defective installation or maintenance. The gag rule itself states that evidence of proof of “use” or of “installation or failure of installation” of a car seat may not be admitted. Failure of installation is the equivalent of negligent installation – bringing it under the auspices of the gag rule, not the exception. The exception applies only to defective installation – a term that denotes a product liability claim. Defective installation, 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 – even if done so negligently.

The exception allows claims for and evidence of “defectively designed, manufactured, installed, or operating” car seats. Because general words are construed to be restricted in their meaning by preceding particular words, Minn. Stat. § 645.08(3), “defectively” modifies the words “designed, manufactured, installed, or operating.”

Other than mentioning that Respondent was occupying a car seat, his Complaint makes no mention of an incident involving a defectively manufactured, designed, installed, or operating car seat. It simply asserts that Appellants were negligent, no different than any other ordinary motor vehicle negligence complaint. It does not allege that the car seat was itself defective, or that any defect was the cause of Respondent’s injuries. The narrow exception to the gag rule simply allows evidence of use or installation of a car seat in product liability cases where there is a claim for defective design, manufacture, installation, or operation of the car seat.

The exception’s reference to “defective” car seats and seat belts refers to product liability actions. It does not include claims of negligent installation or negligent maintenance, particularly given that Subdivision 4(a) explicitly precludes the admission of evidence of use or installation or failure of installation of a car seat.

2. The exception does not permit separate actions to be brought.

In arguing that the statute allows Respondent to bring this negligence action, Respondent contends that a claimant may bring multiple actions. The statutory exception, however, does not authorize separate actions. It does not contemplate and does not allow a claimant to split a cause of action. Subdivision 4(b) does not permit claims generally; it

does not say “paragraph (a) does not affect the right of a person to bring *claims* for damages arising out of an incident . . .”

The exception states that the gag rule does not affect a claimant’s right “to bring an action for damages . . .,” and that evidence in that action (*i.e.* “an action described in this paragraph,” Subdivision 4(b)), may be introduced. While the exception permits “an action,” it does not authorize separate actions. Respondent’s negligence claim against his parents may not be brought separately. It could have been brought along with Respondent’s product liability action against the car seat manufacturer, an action that the exception specifically addresses and permits. Respondent, however chose not to join the claims together for tactical reasons – something the statute does not allow.

Respondent has characterized this as a joinder rule. Because the plain language of the exception simply authorizes “*an action* for damages,” in effect a “joinder” is required before a claimant can invoke the exception and avoid the broad evidentiary prohibition the gag rule mandates. The plain language of the statute should be enforced.

Significantly, there is nothing wrong with the Legislature mandating that all claims be brought at one time. Joinder is a good thing as it allows for the efficient resolution of controversies. It reduces the multiplicity of lawsuits, the resulting expense to the judiciary, and the risk of conflicting or contrary results. It is reasonable, therefore, to enforce the statute’s direction that all claims for damages that arise from an incident that involves an alleged defective seat belt or car seat be brought at one time and in one venue.

There are a number of instances where Minnesota specifically endorses and directs that a single action be brought. The Declaratory Judgment Act specifically requires all

parties be included in a single action. *See* Minn. Stat. § 555.11 (“all parties shall be made parties who have or claim any interest which would be affected by the declaration”); *Frisk v. Bd. of Educ. of Duluth*, 246 Minn. 366, 75 N.W.2d 504, 514 (1956). Likewise, Minnesota’s Paternity Act requires that an alleged father must include the child as a party in certain circumstances. *See* Minn. Stat. § 257.60(3) (same statute elsewhere provides that including the child as a party in other circumstances is not required, but permitted).<sup>3</sup>

As well, this Court has also recognized that certain claims must be joined. For example, consortium claims must be brought together if they are both to be tried. *See Thill v. Modern Erecting Co.*, 284 Minn. 508, 170 N.W.2d 865, 869 (1969); *see also Huffer v. Kozitka*, 375 N.W.2d 480, 481-82 (Minn. 1985) (explaining holding in *Thill* and permitting a separate consortium claim to be tried where spouse’s main claim was settled before it was even put into suit).

It is both permissible and advisable for the Legislature to deem that certain claims shall be brought together, and thereby prohibit the splitting of claims to avoid a multiplicity of lawsuits and wasteful litigation. *Cf. Charboneau v. American Family Ins. Co.*, 481 N.W.2d 19, 21 (Minn. 1992) (No-Fault Act’s jurisdictional limit on arbitrations prohibits claimants from splitting their claims); *Mattsen v. Packmann*, 358 N.W.2d 48, 50 (Minn. 1984); *Hauser v. Mealey*, 263 N.W.2d 803, 807 (1978). Because Respondent did not bring a single action for damages, his separate negligence action falls outside the

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<sup>3</sup> Just as the Legislature can *require* that a single action be brought, it can and has prohibited bringing certain claims at the same time. For example, Minnesota’s long-arm statute prohibits bringing certain claims against a defendant in an action. *See* Minn. Stat. § 543.19, subd. 3 (only causes of action arising from acts set out in Minn. Stat. § 543.19, subd. 1 may be asserted in an action against a defendant subject to long-arm jurisdiction).

statutory exception. Accordingly, the general prohibition of the gag rule applies to preclude the introduction of the evidence upon which Respondent seeks to rely.

**B. Section 169.685 must be construed in its entirety and all parts of the statute must be given meaning; the exception in Subdivision 4(b) should not be read to swallow the general gag rule.**

Both the district court and the Court of Appeals chose to give a broad construction to Subdivision 4(b). This is error because it fails to give proper deference to the broad prohibition in Subdivision 4(a), and fails to construe the statute in its entirety.

This is a personal injury lawsuit seeking damages that resulted from the operation of a motor vehicle and the alleged use or installation (or failure to use or failure of installation) of a car seat. The parties agree that evidence about the use, failure of use, installation, or failure of installation of car seats and seat belts is not admissible in personal injury litigation resulting from use or operation of a motor vehicle. This is the general rule set forth in Minn. Stat. § 169.685, subd. 4(a). This rule existed and operated for thirty-six years before the Legislature enacted an exception, now codified in subdivision 4(b). Statutes must be interpreted so that no word, phrase, or sentence is made superfluous, void, or insignificant. *See Larivee*, 656 N.W.2d at 229; Minn. Stat. § 645.16; Minn. Stat. § 645.17(2).

The broad construction of the exception on the facts of this case permits the introduction of evidence that the gag rule itself explicitly prohibits – evidence of proof of use and installation or failure of installation of a car seat in an ordinary motor vehicle accident litigation. This construction is error and should not be adopted.

**IV. The Legislature did not intend to allow separate negligence actions against parents and others for the use or installation of car seats.**

Respondent has never disputed Appellants' contention that the Legislature intended the exception to permit product liability claims. Instead, Respondent has argued that legislative history and intent must be ignored. This Court can and should examine the legislative history and intent surrounding the gag rule and its exception. It may do so because the exception is ambiguous and because the result produced from the lower courts' broad construction of the exception leads to an absurd result.

The Legislature intended to maintain the general gag rule while crafting an exception to permit product liability actions. The addition of the exception to the gag rule was necessarily a narrow change in the law – permitting an action for “defective” installation where no action previously could be brought because evidence of proof of use or of “installation or failure of installation” of a car seat was prohibited. The Legislature did not enact the exception in a vacuum; it created an exception that must be read and interpreted in concert with and in the context of the rule it modifies in subdivision 4(a). As well, the exception was enacted in response to and at a time of a variety of unsuccessful claims and cases interpreting and applying the gag rule.

**A. Subdivision 4(b) is ambiguous.**

As noted, the exception does not permit the action for damages Respondent has asserted, and does not permit the introduction of evidence pertaining to the use of the car seat that Respondent seeks to admit. Alternatively, legislative intent can be examined

because the language of Subdivision 4(b) is ambiguous, especially when construing the statute as a whole and considering the context in which the exception was enacted.

Where a law is susceptible to more than one meaning, a court should not adopt an interpretation that defeats the purpose the law. *Governmental Research Bureau v. Borgen*, 224 Minn. 313, 28 N.W.2d 760, 764 (1947). The Legislature's purpose in 1999 was to enact an exception to the gag rule, while at the same time reaffirming the gag rule generally. Accepting the Court of Appeals' interpretation would defeat the purpose of the statute, which was to retain the gag rule.

Specifically, Subdivision 4(b) is ambiguous in that it is unclear what "an action for damages arising out of an incident that involves" means and what "an action described in this paragraph" means concerning what evidence is not prohibited and what damage claims can be brought. The ambiguity is highlighted given that the interpretation the Respondent offers directly contradicts the explicit prohibition contained in Subdivision 4(a).

Subdivision 4(b) also is ambiguous in that it is subject to reasonably differing interpretations – Appellants' argument that separate actions are not authorized, and Respondent's argument that the statute does not contain an explicit requirement for joinder. Because of this ambiguity, this Court may look at the legislative history in order to ascertain the legislative intent. *Burkstrand*, 632 N.W.2d at 210. Moreover, because the legislative purpose is clear – to allow an exception for product liability claims but retain the direct prohibition on admitting evidence in ordinary personal injury motor

vehicle litigation – Respondent’s interpretation should be rejected. *Governmental Research Bureau*, 224 Minn. 313, 28 N.W.2d at 764.

**B. The broad construction given to the narrowly crafted exception in Subdivision 4(b) will create an absurd result contrary to the clearly expressed goal of the Legislature, which was to maintain and not repeal the gag rule.**

Even if this Court concludes that Subdivision 4(b) is unambiguous, it should still examine the legislative intent and history because the Court of Appeals’ construction leads to an absurd result that is contrary to the clearly expressed goal of the Legislature. It is undisputed that the Legislature intended to retain the broad prohibition of certain evidence through the gag rule. The Legislature rejected various efforts and suggestions to repeal the gag rule. Thus, the Legislature clearly expressed its goal to retain the gag rule’s prohibition of evidence of the proof of the use or proof of the installation of car seats in any motor vehicle personal injury litigation.

In crafting an exception rather than repealing the gag rule wholesale, the Legislature did not intend for the exception to swallow the gag rule. To construe the exception broadly leads to an absurd result that is directly contrary to the legislative intent to keep the gag rule. If a statute’s literal meaning leads to an absurd result that utterly departs from the legislature’s purposes, courts may look beyond the language and examine other indicia of legislative intent. *Wegener*, 505 N.W.2d at 612.

Appellants recognize that this Court rarely employs an absurdity analysis when interpreting a statute. *Hyatt*, 691 N.W.2d at 827-28. This is an appropriate case for this analysis, however, because the legislative goal is clear, particularly given the response to

*Olson*. While a professed legislative purpose in *Olson* may not have been clear – that the gag rule was intended to only benefit motorists – the purpose to prohibit evidence of car seat use or installation in ordinary motor vehicle personal injury litigation is abundantly clear now. See *Olson*, 558 N.W.2d at 497 (recognizing gag rule is even-handed as it prevents “any party from introducing evidence of both use and failure to use seat belts” or car seats). The gag rule applies equally to both plaintiffs and defendants alike. See *Burck*, 704 N.W.2d at 535 (Minnesota courts have consistently applied the gag rule against both plaintiffs and defendants); *Marsden v. Crawford*, 589 N.W.2d 804, 807 (Minn. Ct. App. 1999); *Bishop v. Takata Corp*, 12 P.3d 459, 464 & n.25 (Okla. 2000) (recognizing Minnesota’s gag rule burdens both manufacturers and vehicle occupants).

Respondent contends that under the exception in Subdivision 4(b), evidence of the use, failure of use, installation, or failure of installation of a car seat is always admissible in any action for damages so long as the incident somehow arguably arose out of an incident that involved an allegedly defectively designed, installed, manufactured, or operated car seat or seat belt. If Respondent’s argument is accepted, then someone will need only invoke the specter of a defectively installed or operated car seat in order for the exception to apply. Every car seat is either installed or operated by some person that is not the manufacturer. As such, under Respondent’s view, every such person would be vulnerable to litigation, in contravention of the long history of the gag rule and the provisions of Section 169.685, subd. 4(a).

An expansive reading of the exception would necessarily remove car seats from the gag rule because every car seat is “installed” into a vehicle when it is used, and thus

every motor vehicle personal injury litigation with a car seat would involve an incident arising from a defectively installed car seat. Such a broad interpretation would make superfluous the gag rule's prohibition on introducing evidence of proof of installation of a car seat. Respondent's view would necessarily mean that evidence of use, as well as non-use, of a car seat in ordinary motor vehicle personal injury litigation would become admissible simply because a claim could be made that the parents negligently or improperly installed the car seat. This directly contradicts the intent of the Legislature, which chose not to repeal the gag rule. The exception the Legislature added cannot be read to achieve a result the Legislature specifically rejected.

Respondent equates 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 when they use or install a car seat. This interpretation would render the gag rule inapplicable to cases where a car seat was used. The exception would swallow the rule, a construction that should not prevail.

Under Respondent's interpretation, each of the following circumstances would survive under the exception:

- Evidence that a person failed to use a car seat but instead used the regular seat belts would be admissible because it constituted a defective "installation;"
- Evidence that a person placed a car seat facing the wrong way would be admissible because it constituted a defective "installation;"
- 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;"

- Evidence that a person “installed” a lower quality car seat would be admissible because it constituted a defective “installation.”

Under Respondent’s interpretation, the gag rule would be made inapplicable to cases involving a car seat. The Legislature, however, did not take out the phrase “child restraint system” from Subdivision 4(a) when it added Subdivision 4(b). Instead, the Legislature specifically expressed its intent and enacted a narrow exception to respond to the issues addressed in *Olson* regarding product liability claims against manufacturers of car seats or seat belts. Respondent’s interpretation is unreasonable and unsupported by the law and the record.

For any litigation such as this one, where the claim is that a parent negligently installed or used the car seat, the exception will be invoked if Respondent’s view is accepted. But the factual situation here – a child suing his parents for personal injuries resulting from an alleged improper use or installation – is precisely the general rule contained in Subdivision 4(a). If the general gag rule does not apply here, when could it apply?

To keep the exception from swallowing the rule (as in the examples above), and to avoid an absurd result, this Court should interpret the exception narrowly by reading the provisions of Subdivisions 4(a) and 4(b) together -- which means that the exception in Subdivision 4(b) should be read to permit products liability claims, but not to allow separate negligence claims. This interpretation of statute gives meaning to both the plain language of the gag rule and its exception, and allows the statute to be construed so that no word, phrase,

or sentence is made superfluous, void, or insignificant, *see Larivee*, 656 N.W.2d at 229, and avoids an absurd result.

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

The Legislature intended to retain the general gag rule prohibiting evidence of proof of use or installation of car seats in ordinary motor vehicle litigation, while crafting an exception to permit product liability cases involving defective car seats.

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. *See* Minn. Stat. § 645.16. Contemporaneous legislative history may include events leading up to the passage of the act, the history of the act's passage, and any modifications made during the course of passage of the bill. *Sevcik v. Commissioner of Taxation*, 257 Minn. 92, 100 N.W.2d 678, 687 (1959). As well, in seeking to ascertain the legislative intent, a court may consider the consequences of a particular statutory interpretation. *Id.*

A consideration of these matters shows the Legislature intended to craft an exception to the gag rule to permit product liability cases while maintaining the general gag rule. There is nothing to indicate the Legislature intended to permit claimants to bring separate negligence actions as a strategy or tactic.

The Legislature enacted the gag rule exception in response to *Olson* and other product liability cases. Various groups were troubled that the gag rule was precluding claims against product manufacturers. To remedy this mischief, the Legislature crafted an exception permitting claims for “defective” seat belts and car seats. The Legislature specifically considered and rejected efforts and suggestions to repeal the gag rule. *See, e.g.,* H.F. 2291, S.F. 2004, 80th Leg. Sess. (Minn. 1997); *see also Olson*, 558 N.W.2d at 495 n. 3 (noting both legislative houses earlier considered bills to eliminate the seat belt gag rule, but took no action). Thus, the Legislature wished for the gag rule to remain, with an exception for product liability claims, such as those in *Olson*, against product manufacturers.

Others recognize that the exception was for product liability actions. *See, e.g. Bishop*, 12 P.3d at 465 (Oklahoma Supreme Court describing the 1999 amendment as one specifically allowing evidence in a product liability action); A.48 (May 21, 1999 *Session Weekly*, Vol. 16, No. 20 at 37 (reporting on veto override and noting the “new measure simply exempts claims of defective or malfunctioning seat belts from the gag rule law”)).<sup>4</sup>

As Senator Foley, the author of the gag rule exception, stated, the bill provided **“an exception in products liability cases involving a defective seatbelt or passenger**

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<sup>4</sup> *See also* A.52 (“Seat Belt Law Challenged,” MPR article available at [http://news.minnesota.publicradio.org/features/199903/23\\_stawickie\\_seat/](http://news.minnesota.publicradio.org/features/199903/23_stawickie_seat/) (Representative Mary Jo McGuire’s remarks about preference to repeal gag rule entirely but willing to author exception so that “at least where we have found [seat belts or car seats] to be defective, we should be able to bring cases in those instances. So you take what you can get.”)).

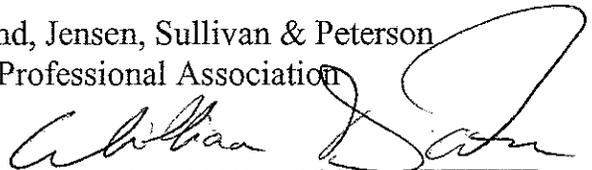
restraint systems.” A.38-39 (emphasis added). Senator Foley went on to note that the bill would allow evidence of a “seatbelt or the child restraint system [that] was defective” – specifying a particular product for which a party could be held liable. There is no legislative history indicating any intent to allow separate negligence actions for using or installing car seats or seat belts. Accordingly, Respondent’s separate negligence action fails.

### CONCLUSION

Because the gag rule exception for product liability claims does not apply to permit a separate personal injury action against parents for their alleged negligence in using or installing a car seat, Appellants Amy Harrison and Ted Harrison, Sr. respectfully request that the Court reverse the Court of Appeals, conclude that evidence of use of a car seat is not admissible, and order entry of judgment in Appellants’ favor.

Respectfully submitted,

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Dated: August 18, 2006

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).