

- SUBJECT:** Defense to prosecution for failing to use a child passenger safety seat
- COMMITTEE:** Transportation — favorable, without amendment
- VOTE:** 9 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, Pickett
- 1 nay — Riddle
- 1 absent — McClendon
- WITNESSES:** For — (*Registered, but did not testify:* Ellen Arnold, Texas PTA; Marshall Kenderdine, Texas Pediatric Society; Bryan Sperry, Children's Hospital Association of Texas)
- Against — None
- On — (*Registered, but did not testify:* Frank Luera, Department of State Health Services Safe Riders; Chris Nordloh, Texas Department of Public Safety)
- BACKGROUND:** Transportation Code, sec. 545.412, makes it a misdemeanor offense to transport a child younger than eight years old — unless the child is taller than four feet, nine inches — in a passenger vehicle without securing the child in a child passenger safety seat system that meets federal standards. The first offense is a misdemeanor punishable by a fine of up to \$25. Second and subsequent offenses are punishable by a fine of up to \$250.
- Drivers are exempt from the offense if they were:
- operating a vehicle transporting passengers for hire, except for third-party transport service providers when transporting clients under a contract to provide nonemergency Medicaid transportation; or
 - transporting a child in a vehicle in which all the seats with child passenger safety seat systems or safety belts were occupied.

It is a defense to prosecution under sec. 545.412 that:

- the person was operating the vehicle in an emergency or for a law enforcement purpose (§545.412(c)); or
- the person provided satisfactory evidence to the court that he or she possesses an appropriate child passenger safety seat system for each child required to be secured in a child passenger safety seat system (§545.4121(b)).

DIGEST:

HB 1294 would eliminate the defense to prosecution for not securing a child in a safety seat under Transportation Code, sec. 545.412 if a driver could prove that he or she possessed a child passenger safety seat system.

The bill would add a defense to prosecution for a person who, at the time of the offense:

- had not been arrested or issued a citation for violation of any other offense; and
- did not already possess a child passenger seat in the vehicle but obtained a child passenger safety seat after the offense.

The bill would take effect September 1, 2013, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 1294 would protect children's safety by encouraging drivers to have and use a child passenger safety seat when transporting a child younger than eight years old or not taller than four feet, nine inches.

Current law provides a defense to prosecution for those who own child passenger safety seats but are not using them, which does nothing to ensure children's safety. By changing the defense to prosecution to allow people to get and use a child passenger safety seat if they did not already have one, HB 1294 would help increase awareness of the law and inform drivers of the dangers of not using a safety seat without unnecessarily punishing those who want to follow the law. Changing the defense to prosecution would help ensure that drivers obtained and used the new child safety seat in the future by removing the current defense to prosecution that allows drivers to dismiss a ticket, even on subsequent offenses, for owning but not using the seat.

Adult seat belts are dangerous for children shorter than four feet, nine inches. When a child is not yet that tall, the adult lap belt and shoulder strap cannot be fitted properly across the child unless he or she has been

properly placed in a booster seat or car seat. Children younger than eight years old or not taller than four feet, nine inches who are restrained only by a seatbelt are susceptible in the event of a car accident to severe damage to their internal organs, paralysis, and death.

HB 1294 would improve child vehicle safety without imposing a financial burden on families. Child safety seats and booster seats are inexpensive, even for low-income families, with the cost of booster seats ranging from \$15 to \$40 on average. The Department of State Health Services and state nonprofits administer programs that provide free child passenger safety seats to low-income families who cannot afford one.

The cost of a car seat is minimal when compared to the potential cost of not properly securing a child. Placing young children in car seats saves the state and families thousands of dollars in potential personal injury, public medical expense costs, and work losses, and most important, protects the health of the child.

**OPPONENTS
SAY:**

While the child safety passenger seat law is well intentioned, HB 1294 would stiffen the requirements for repeat violators of a law that already represents an unwarranted intrusion by the government into decisions that are best left to the judgment of parents. Parents should have the freedom to determine what is best for their children with regard to riding in a car safety seat.

**OTHER
OPPONENTS
SAY:**

Rather than tinkering with defenses to prosecution that still render this important law toothless, the Legislature should require that the state's child safety passenger seat law be observed by drivers and enforced by authorities. Child safety seats cannot protect the lives and health of children if they are not installed and used.