

1-1-1988

MOTOR VEHICLES AND TRAFFIC Seat Belts: Require Use

L. Bombich

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

L. Bombich, *MOTOR VEHICLES AND TRAFFIC Seat Belts: Require Use*, 5 GA. ST. U. L. REV. (1988).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol5/iss1/49>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

MOTOR VEHICLES AND TRAFFIC

Seat Belts: Require Use

CODE SECTION: O.C.G.A. § 40-8-76.1 (new)
BILL NUMBER: HB 751
ACT NUMBER: 819
SUMMARY: The Act requires occupants of the front seat of a passenger vehicle to wear seat belts. Exceptions are provided for occupants of certain vehicles, such as vehicles used for delivery purposes. Failure to wear a seat belt is not permitted as evidence in civil negligence actions, nor may the failure serve as a basis for cancelling or increasing insurance rates. The Act provides for the issuance of a warning in all instances and a fine in limited instances.
EFFECTIVE DATE: September 1, 1988

History

In recent years, public awareness of the need to wear seat belts has increased dramatically. This increase is due in part to public awareness programs and advertising which encourage the public to “buckle up.”¹ Statistics indicate that lives are saved by the use of seat belts.²

1. Georgia Safety Belt Coalition, Fact Sheet (copy on file at *Georgia State University Law Review* office) [hereinafter G.S.B.C. Fact Sheet]. For example, the Georgia Safety Belt Coalition was established to encourage the passage of a mandatory seat belt law and to encourage the voluntary use of seat belts by educating the public about the advantages of seat belts. *Id.*; Telephone interview with Tom Longerbeam, Public Affairs Manager, Motor Vehicle Manufacturers Association (Apr. 13, 1988) [hereinafter Longerbeam Interview]. The Motor Vehicle Manufacturers Association has been encouraging the public to buckle up since 1968. *Id.*

2. Georgia Safety Belt Coalition, Information Sheet (copy on file at *Georgia State University Law Review* office) [hereinafter G.S.B.C. Information Sheet]. Of 101 traffic fatalities in Georgia in June of 1987, only one of those persons was wearing a seat belt. *Id.*; see also Motor Vehicle Manufacturers Association of the United States, Inc., *Get It On!* (1985) (copy on file at *Georgia State University Law Review* office). According to that publication, “[s]afety belt users . . . experienced 80% fewer deaths from head injuries — and no deaths from neck injuries” in the years 1980 through 1983. *Id.* According to a 1987 telephone survey by the Governor’s Office of Highway Safety, just under 20% of Georgia’s citizens use seat belts, 65% favor a mandatory seat belt law, and 86% consider wearing seat belts a healthy thing to do. G.S.B.C. Information

As public concern increased so did federal government concern and involvement. The Department of Transportation (DOT) issued a rule requiring all automobiles manufactured on or after September 1, 1989 be equipped with automatic restraints.³ Standard 208 requires automatic occupant protection in all passenger automobiles based on a phase-in schedule beginning September 1, 1986, with full implementation required by September 1, 1989.⁴ This requirement is to be rescinded if mandatory seat belt use laws are passed in a sufficient number of states before April 1, 1989, to cover two-thirds of the United States' population.⁵

As of January, 1987, mandatory seat belt laws covered sixty-nine percent of the total population of the United States.⁶ These laws vary widely in their stringency; moreover, it is debatable whether all state laws comply with Standard 208.⁷ To comply with Standard 208, the state law must (1) require each front seat occupant to be wearing seat belts whenever the car is in forward motion; (2) provide for a minimum twenty-five dollar penalty for each occupant violator; (3) allow a violation to mitigate damages; (4) permit waiver of the seat belt requirement for medical purposes only; and (5) establish a program to encourage seat belt use.⁸

Some automotive safety advocates are concerned that if enough states pass mandatory seat belt laws, the federal government will never require air bags in new automobiles⁹ even though studies have shown that air bags are beneficial to automobile safety.¹⁰ However, if Standard 208's

Sheet. Of the individuals in the survey, 70% had increased their usage in the past three years, many due to the influence of the media. *Id.*

3. Federal Motor Vehicle Safety Standard 208, Occupant Crash Protection, 49 C.F.R. § 571.208 (1987). This rule was revised in 1984 by the Department of Transportation in response to the United States Supreme Court's 1983 ruling in *Motor Vehicles Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983). *Public Citizen v. Steed*, 851 F.2d 444 (D.C. Cir. 1988). *See* 49 Fed. Reg. 29,009 (1984). In *State Farm* the Court had declared unlawful the National Highway Traffic Safety Administration's 1981 decision rescinding earlier passive restraint requirements of this rule. *Steed*, 851 F.2d at 446. In its *Steed* decision, the D.C. Circuit stated that, "[p]assive restraint regulation (Standard 208) has advanced over the years along a protracted, winding, sometimes perilous course." *Id.* at 445.

4. 49 Fed. Reg. 28,963 (1984).

5. *Id.*

6. Motor Vehicle Manufacturers Association of the United States, Inc., State Relations Committee, Safety Belt Use Bulletin (Jan. 15, 1987) (copy on file at *Georgia State University Law Review* office).

7. Longerbeam Interview, *supra* note 1.

8. 49 C.F.R. § 571.208 at S4.1.5.2 (1987).

9. Interview with Terrence Shannon, Aide to Senator Thomas F. Allgood, Senate District No. 22 (Apr. 13, 1988). As the *Steed* court noted, Standard 208 "does not mandate airbags; it commands only installation, by 1989, of some type of effective full-front passive restraint Recognizing the superiority of air bags over automatic seatbelts, however, NHTSA has determined to encourage, although not require, automakers to develop and utilize airbag technology" 851 F.2d at 447.

10. *See, e.g.,* Traffic Safety Now, Inc., No Time to Lose: State Belt Use Laws Now! 5 (copy on file at *Georgia State University Law Review* office) [hereinafter T.S.N., No

minimum criteria for MULS are strictly enforced, many of these laws may not be in compliance with the federal standards.¹¹ Thus, the automatic rescission provision may never be triggered. However, the DOT may have retreated from its earlier position on automatic rescission. Standard 208 appears to provide for some form of automatic occupant restraint even if two-thirds of the states enact MULS.¹²

To date, no laws have been tested for compliance with the federal standards.¹³ The Georgia law does not meet federal standards since Georgia's fine is less than the minimum required twenty-five dollar fine; the waiver of the seat belt requirement exists for situations other than medical reasons; and, the seat belt violation may not be used in subsequent litigation to mitigate damages.¹⁴

The pressure created by the federal passive restraint rule to enact mandatory seat belt laws caused strong reaction in the automobile industry. The industry responded by investing approximately sixty-two million dollars to encourage the public to buckle up.¹⁵ The industry is also encouraging the enactment of mandatory seat belt legislation.¹⁶ Seat belts are preferred by the industry over air bags because seat belts offer the most comprehensive protection. Air bags, when installed, become a supplementary protection system, and there is concern that once installed, the public will forego the use of seat belts. Further, the installation, replacement, and reactivation of air bags is very costly as compared to seat belts. These costs will be borne mainly by the public.¹⁷

Even though the automobile industry has encouraged the public to use seat belts since 1968, actual public response has been discouragingly low.¹⁸ The consensus among automakers is that mandatory seat belt laws

Time to Lose]. Statistics indicate air bag use reduces traffic fatalities by 20% to 40% while air bags used with seat belts reduce traffic fatalities by 40% to 50%. *Id.*

11. Longerbeam Interview, *supra* note 1.

12. See 49 C.F.R. § 571.208 at S4.1.5.1. "If the Secretary of Transportation determines, by not later than April 1, 1989, that state mandatory safety belt usage laws have been enacted that meet criteria . . . each passenger car manufactured [after September 1, 1986] . . . shall comply with [these requirements]" *Id.* (emphasis added).

13. Longerbeam Interview, *supra* note 1.

14. O.C.G.A. § 40-8-76.1 (Supp. 1988).

15. Longerbeam Interview, *supra* note 1.

16. *Id.*

17. *Id.* In 1983, initial installation for the driver's side cost \$850. In 1988, the cost decreased to \$350. Approximately 25% of 1988 model cars already have air bags installed; for 1989 models, the figure stands at 40%. The cost of replacement and reactivation will amount to more than twice the cost of the original installation. This cost likely will be covered by insurance. *Id.*

18. *Id.* Since 1968, the industry has encouraged the use of seat belts but only 14% of the population has responded without legislation. With legislation, the use of seat belts increases to 60 to 70%. There is also a corresponding decrease in related deaths and injuries. In some states, such as North Carolina and Iowa, enactment of mandatory seat belt laws has resulted in decreased insurance rates. *Id.*

will increase usage tremendously, and ultimately save lives.¹⁹ The automobile manufacturing industry is also concerned that upon the installation of air bags, the public will be under the impression that there is no need to use seat belts. The problem with this public misconception is that the protection offered by air bags is limited to the initial impact on the front of the automobile; any other impact requires the protection of seat belts.²⁰

Many of the legislators who introduced mandatory seat belt bills in Georgia did so out of concern for public safety. Many legislators had either been in automobile accidents or had friends who were seriously or fatally injured in automobile accidents.²¹ According to the Georgia Safety Belt Coalition the use of seat belts in Georgia could save 360 lives and 150 million dollars each year.²²

From the beginning, mandatory seat belt legislation was strongly opposed. One common objection to the law is that it would infringe on individual freedom to choose whether to wear a seat belt.²³ Opponents of the law argue that educating drivers about the dangers of not wearing seat belts is a more appropriate solution to the problem.²⁴

In contrast, seat belt law proponents argue that states have a right to regulate seat belt use.²⁵ This argument is based on two propositions. First, automobiles are already subject to state and federal laws.²⁶ Second, accidents which result in injury and property damage are expensive and that expense is borne ultimately by society.²⁷ Thus, the regulation of seat belts falls within the government's ordinary police powers.²⁸

Whether a state law requiring its citizens to wear seat belts infringes on the fundamental right to privacy was answered by the Illinois Supreme Court in 1986.²⁹ The court held that because the legislature has the power

19. *Id.*

20. *Id.*; see also T.S.N., No Time to Lose, *supra* note 10 at 6.

21. Telephone interview with Representative Dick Lane, House District No. 27 (Apr. 14, 1988) [hereinafter Lane Interview]. Representative Lane introduced HB 8 and HB 751 out of concern raised by accidents involving friends. *Id.*

22. G.S.B.C. Fact Sheet, *supra* note 1.

23. Telephone interview with Representative Bill H. Barnett, House District No. 10 (Apr. 15, 1988) [hereinafter Barnett Interview].

24. *Id.*

25. Georgia Safety Belt Coalition, Answers to Some Frequently Asked Questions About Automobile Safety Belts (copy on file at Georgia State University Law Review office) [hereinafter G.S.B.C. Answers]; see also T.S.N., No Time to Lose, *supra* note 10, at 12-13.

26. *Id.*

27. G.S.B.C. Information Sheet, *supra* note 2. In 1986, over \$1.6 billion in costs resulted from traffic deaths and injuries. The sources of the costs include increased "insurance premiums, road repair, emergency services, workman's compensation, social security survivor benefits, and publicly funded medical care." *Id.*

28. See G.S.B.C. Answers, *supra* note 25.

29. *People v. Kohrig*, 113 Ill. 2d 384, 498 N.E.2d 1158 (1986), *appeal dismissed*, 479 U.S. 1073 (1987).

to regulate motor vehicle use to provide for the health, safety, and welfare of the public, the state may pass a law requiring mandatory seat belt usage.³⁰ The case was appealed to the United States Supreme Court, but was dismissed for want of a substantial federal question.³¹

Some legislators are concerned with difficulties in enforcing the new seat belt law.³² Although many consider the law beneficial, they concede the benefits may not be realized if the law is unenforceable.³³ For example, current state law requires children under the age of three to ride in a federally approved car seat and requires children between the ages of three and four to wear a seat belt.³⁴ Although statistics indicate that within the first three months of the law's existence the use of child restraints practically doubled, the law has not been strictly enforced.³⁵ Law enforcement officers have many responsibilities, and looking for violations of mandatory seat belt laws is probably not a priority compared to other duties.³⁶

Proponents of the bill admit that enforcement may be limited since drivers will be cited for seat belt violations only when stopped for speeding, reckless driving, or similar violations.³⁷ They argue, however, that such enforcement occurs when needed most.³⁸ Proponents of the bill also argue that many individuals now will buckle up because it is the law.³⁹

Prior to HB 751, many attempts were made to enact a mandatory seat belt law. HB 8, SB 64, both introduced in 1987,⁴⁰ and SB 482, introduced in 1988,⁴¹ are each reflected in the final version of HB 751. HB 8 provided that failure to buckle up would be a misdemeanor, imposing a twenty-five dollar fine.⁴²

30. *Id.* at 397, 498 N.E.2d at 1165.

31. *Kohrig v. Illinois*, 479 U.S. 1073 (1987).

32. Telephone interview with Representative Jerry D. Jackson, House District No. 9 (Apr. 14, 1988) [hereinafter Jackson Interview]; *see also* Barnett Interview, *supra* note 23.

33. Jackson Interview, *supra* note 32.

34. O.C.G.A. § 40-8-76(b) (1985).

35. Beasley, *Law Requiring Kids Under 4 to Buckle Up Is Loosely Enforced*, Atlanta J., Feb. 1, 1988, at 1A, col. 1; *see also* House of Representatives, Weekly Legislative Report at 3 (Feb. 12, 1988). Only 38% of Georgia drivers comply with the child restraint law. *Id.*

36. Beasley, *supra* note 35. The child restraint law previously required a 14-day waiting period before the citation became final; during that time it could be voided upon proof that a car seat was obtained. Thus, the waiting period made the citation process more cumbersome for law enforcement officers. *Id.*; *see* 1983 Ga. Laws 1464 (formerly found at O.C.G.A. § 40-8-76(b)(2) (1985)). However, 1988 legislation removes this waiting period. O.C.G.A. § 40-8-76(b)(2) (Supp. 1988).

37. O.C.G.A. § 40-8-76.1(e)(2) (Supp. 1988); Lane Interview, *supra* note 21.

38. Lane Interview, *supra* note 21.

39. *Id.*

40. Final Composite Status Sheet, Mar. 12, 1987.

41. Final Composite Status Sheet, Mar. 7, 1988.

42. HB 8, as introduced, 1987 Ga. Gen. Assem.

A substitute offered to HB 8 would have limited the violation to instances in which an individual was stopped and cited for a violation of some other provision of the Motor Vehicles and Traffic Title.⁴³ The substitute also set out exceptions to the general mandatory seat belt rule for (1) delivery vehicles which do not exceed fifteen miles per hour; (2) individuals with a physician's statement or license from another state which certifies that the driver is medically unable to wear seat belts; (3) a vehicle operating in reverse; (4) a "vehicle with a model year prior to 1965"; (5) a vehicle which legally is not required to be equipped with seat belts; and (6) a federal mail carrier.⁴⁴

SB 64 was similar to HB 8. SB 64 was amended on the Senate floor to reduce the fine from twenty-five to fifteen dollars.⁴⁵ This bill passed the Senate and was subsequently read twice in the House, but did not pass in the House.⁴⁶

SB 482 was introduced in the 1988 session and is also similar to HB 8 in its general stipulations. Although the penalty was set at twenty-five dollars, SB 482 did not classify violations as misdemeanors as had HB 8.⁴⁷ SB 482 was amended by the Senate to prohibit smoking in a vehicle operated by individuals required to wear seat belts.⁴⁸ This amendment was rejected.⁴⁹

HB 751

HB 751 contains many of the provisions of HB 8 except for the penalty.⁵⁰ As introduced, HB 751 provided that a violator would receive a warning only.⁵¹ The House Committee on Motor Vehicles added an exception for vehicles used for newspaper deliveries.⁵² The committee substitute also provided for a fine of up to fifteen dollars.⁵³ The fine provision only applied in combination with a violation of another Motor Vehicle Code section.⁵⁴ Further, the fine was not to remain on the indi-

43. HB 8 (HFS), 1987 Ga. Gen. Assem. The substitute, offered by Senator Lane, was never adopted. HB 8, as introduced, was unfavorably reported from the House Committee on Motor Vehicles on Feb. 2, 1987. Final Composite Status Sheet, Mar. 12, 1987.

44. HB 8 (HFS), 1987 Ga. Gen. Assem.

45. SB 64 (FA), 1987 Ga. Gen. Assem.

46. Final Composite Status Sheet, Mar. 7, 1988.

47. SB 482, as introduced, 1988 Ga. Gen. Assem.

48. SB 482 (SFA), 1988 Ga. Gen. Assem.

49. Final Composite Status Sheet, Mar. 7, 1988.

50. See *supra* text accompanying note 42.

51. HB 751, as introduced, 1988 Ga. Gen. Assem.

52. HB 751 (HCS), 1988 Ga. Gen. Assem.

53. *Id.*

54. *Id.* These violations include speeding (O.C.G.A. § 40-6-181 (1985)), drag racing (O.C.G.A. § 40-6-186 (1985)), hit and run (O.C.G.A. § 40-6-271 (1985)), reckless driving (O.C.G.A. § 40-6-390 (1985)), driving under the influence (O.C.G.A. § 40-6-391 (1985)), vehicular homicide (O.C.G.A. § 40-6-393 (1985)), serious injury by vehicle (O.C.G.A. §

vidual's driving record.⁵⁵ The bill was then reported from the House Committee without recommendation.⁵⁶

A House floor amendment added an exception for emergency vehicles.⁵⁷ The House then passed the bill.⁵⁸ The Senate passed the bill without change.⁵⁹ Governor Joe Frank Harris's support was instrumental in the bill's passage.⁶⁰ The Governor publicly stated that he would not sign the bill increasing the speed limit to 65 miles per hour on rural interstates without the passage of a mandatory seat belt bill.⁶¹

The Act defines a passenger vehicle as an automobile designed for transporting up to ten passengers; motorcycles and off-road vehicles are excluded.⁶² Each front seat passenger must wear a federally approved seat belt while the car is in operation.⁶³ Seat belts are not required for occupants of delivery vehicles,⁶⁴ persons with written medical excuses,⁶⁵ persons with licenses from states other than Georgia which authorize the inability to wear seat belts,⁶⁶ "driver[s] operating . . . in reverse,"⁶⁷ persons in cars "with a model year prior to 1965,"⁶⁸ occupants of a vehicle "not required to be equipped with safety belts under federal law,"⁶⁹ persons delivering mail or newspapers,⁷⁰ and persons in emergency vehicles.⁷¹

In any civil action, violation of the Act may neither be used as evidence of negligence or liability nor be used to mitigate damages.⁷² Similarly, a violation may not be used to increase insurance rates or to cancel coverage.⁷³

40-6-394 (1985)), and eluding a police officer (O.C.G.A. § 40-6-395 (1985)).

55. HB 751 (HCS), 1988 Ga. Gen. Assem.

56. Final Composite Status Sheet, Mar. 7, 1988.

57. HB 751 (HFA), 1988 Ga. Gen. Assem.

58. Final Composite Status Sheet, Mar. 7, 1988. HB 751 passed the House by a vote of 105 to 71 and was immediately transmitted to the Senate on Feb. 11, 1988. House of Representatives, Weekly Legislative Report, at 1 (Feb. 12, 1988).

59. Final Composite Status Sheet, Mar. 7, 1988.

60. Lane Interview, *supra* note 21; Barnett Interview, *supra* note 23.

61. See Lane Interview, *supra* note 21; see also House of Representatives, Weekly Legislative Report, at 1 (Jan. 15, 1988). The federal government allowed the states to increase speed limits above 55 miles per hour on interstates outside large cities in 1987. 23 U.S.C. § 154(a)(2) (1987). Georgia responded by passing the law to increase the speed limit on rural interstates to 65 miles per hour. O.C.G.A. § 40-6-181 (Supp. 1988).

62. O.C.G.A. § 40-8-76.1(a) (Supp. 1988).

63. O.C.G.A. § 40-8-76.1(b) (Supp. 1988).

64. O.C.G.A. § 40-8-76.1(c)(1) (Supp. 1988).

65. O.C.G.A. § 40-8-76.1(c)(2) (Supp. 1988).

66. O.C.G.A. § 40-8-76.1(c)(3) (Supp. 1988).

67. O.C.G.A. § 40-8-76.1(c)(4) (Supp. 1988).

68. O.C.G.A. § 40-8-76.1(c)(5) (Supp. 1988).

69. O.C.G.A. § 40-8-76.1(c)(6) (Supp. 1988).

70. O.C.G.A. § 40-8-76.1(c)(7), (8) (Supp. 1988).

71. O.C.G.A. § 40-8-76.1(c)(9) (Supp. 1988).

72. O.C.G.A. § 40-8-76.1(d) (Supp. 1988).

73. *Id.*

Violating the Act is not a criminal offense.⁷⁴ Absent a violation of another section of the motor vehicle code a violator can only be issued a warning that operating automobiles without seat belts is dangerous.⁷⁵ A fine of up to fifteen dollars may be imposed upon violators who have also committed other traffic violations.⁷⁶ Any conviction under the Act does not become part of the violator's record.⁷⁷

L. Bombich

74. O.C.G.A. § 40-8-76.1(e)(1) (Supp. 1988).

75. *See supra* text accompanying note 54.

76. O.C.G.A. § 40-8-76.1(e)(2) (Supp. 1988). *See also supra* note 54.

77. *Id.*