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LAWS REQUIRING SEAT BELTS

The Commentary series covers, on a selective basis, the development and status of state motor vehicle and traffic laws, particularly as they relate to provisions in the Uniform Vehicle Code.

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LAWS REQUIRING SEAT BELTS

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INTRODUCTION

Substantial reduction in injuries and fatalities resulting from highway crashes apparently will require the presence and use of devices that restrain and protect occupants of vehicles involved in those crashes. This Commentary[1] primarily reviews state laws requiring motor vehicles to have seat belts in the context of comparable provisions in the Uniform Vehicle Code.[2] It also discusses some domestic and foreign laws requiring use of belts, civil court decisions on the effect of failing to use available belts and the possible preemption of state laws by Federal Motor Vehicle Safety Standards.

Uniform Vehicle Code

Uniform Vehicle Code section 12-412 deals with seat belts and shoulder harnesses, and requires that front seating positions in new passenger cars be equipped with lap type safety belts after January 1, 1965, and a combination of lap belts and shoulder harnesses after January 1, 1968.[3] Passenger cars made after January 1, 1968, are required to have lap type safety belts for all seating positions.[4] The section further requires that all seat belts or shoulder harnesses must conform to minimum performance standards, current as of the time of sale of the belt or harness, set by the state commissioner of motor vehicles or by the United States Department of Transportation.[5] Police vehicles are specifically exempted from passenger restraint requirements in other than front seating positions and the state motor vehicle commissioner is authorized to exempt any motor vehicle from the requirements when compliance would be impractical.[6]

Federal Regulations

Federal Motor Vehicle Safety Standard (FMVSS) No. 208,[7] effective January 1, 1968, requires either a lap belt alone, or a combination lap and shoulder belt, at each seating position of any new passenger cars.[8] A combination lap and shoulder belt is required at the front outboard seating positions on all such vehicles except convertibles.[9]

FMVSS No. 208 was revised and its application was extended to cover multipurpose passenger vehicles, trucks and buses made after July 1, 1971.[10] The revised Standard requires a lap belt for all seating positions in convertibles, open-body type vehicles, walk-in vans, trucks and multipurpose passenger vehicles

with a gross vehicle weight rating exceeding 10,000 lbs., and for the driver's seat in buses. In all other vehicles, a combination lap and shoulder belt is required in each front outboard seating position, and a lap belt alone is required in all other seating positions, including auxiliary seats and side- and rear-facing seats.

FMVSS No. 208 was extensively revised effective January 1, 1972, with additional requirements coming into effect on August 15 of 1973, 1975 and 1977.[11] Essentially these revisions reflect a movement toward a system of passive restraints (a system that will automatically protect a vehicle occupant in a crash without his having activated the device) which meets specified performance criteria regarding protection of occupants during crashes with such passive restraints to be required in all seating positions for new passenger cars after August 15, 1975, and for new multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 10,000 lbs. or less after August 15, 1977. Passive restraint systems will not be required for vehicles exceeding 10,000 lbs. or for buses (Standard 208 imposes requirements only for the driver's seat in buses) provided that the performance criteria can be met with an active restraint system. In the interim between the seat belts of today and the passive restraint systems of 1975, manufacturers are allowed to employ any of several options which meet certain performance criteria. The options which appear least burdensome and thus most likely to be employed by the manufacturers of passenger cars are as follows: For passenger cars manufactured after January 1, 1972 and prior to August 15, 1973, combination lap and shoulder belt systems at the front outboard seating positions that restrain test dummies in a 30 m.p.h. barrier crash, and lap belts in all other seating positions, are required.[12] For passenger cars manufactured after August 15, 1973 and prior to August 15, 1975, the requirements are essentially the same except that the system would be required to be equipped with an ignition interlock that would prevent the engine from starting if any front seat occupant did not have his belt fastened.

As to federal regulations, it should also be noted that the Bureau of Motor Carrier Safety requires seat belts for drivers in trucks, buses and other vehicles in interstate commerce that are under their jurisdiction and that were made after January 1, 1965, and requires use of available seat belts by drivers.[13] Belts in trucks for any passenger in a front seat are also required.

LAWS REQUIRING RESTRAINT EQUIPMENT

Vehicle Type or Use

The Uniform Vehicle Code seat belt requirements apply to all passenger cars manufactured or assembled after a specified date.[14] Under the UVC, a "passenger car" is defined to include every motor vehicle designed to carry 10 or less passengers and used for the transportation of people, except motorcycles and motor-driven cycles.[15] To this it must be added that the Code's seat belt requirements are inapplicable to farm tractors and other implements of husbandry, road machinery and road rollers.[16]

The Uniform Vehicle Code also provides that the commissioner of motor vehicles may exempt specified types of motor vehicles or seating positions from lap or shoulder belt requirements when compliance would be impractical. Convertibles, for example, should be exempted from requirements for shoulder harnesses under this provision.[17]

Thirty-four states and the District of Columbia require seat belts in passenger cars although the descriptions of the vehicles vary substantially from state to state. These 35 jurisdictions are:

Alaska[18]
California[19]
Connecticut[20]
Georgia[21]
Illinois[22]
Indiana[23]
Iowa[24]
Kansas[20]
Maine[23]
Maryland[25]
Massachusetts[26]
Michigan[27]
Minnesota[28]
Mississippi[23]
Missouri[29]
Montana[23]
Nebraska[30]
Nevada[31]
New Jersey[23]
New Mexico[23]
New York[32]
North Carolina[33]
North Dakota[23]
Ohio[31]
Oklahoma[20]
Oregon[34]
Rhode Island[23]
Tennessee[23]
Texas[35]
Vermont[36]
Virginia[37]
Washington[23]
West Virginia[23]
Wisconsin[23]
District of Columbia[38]

One additional state (Kentucky), although not imposing requirements for seat belts, does require anchorage units for seat belts in the front seat. This requirement applies to passenger vehicles. Thus, a total of 36 jurisdictions have some requirement for passenger restraint equipment applicable to passenger vehicles.

Of these 36 jurisdictions which impose some restraint equipment requirement for passenger cars, eight appear to exempt some passenger cars, primarily taxicabs, from all or some of their requirements. Three of these eight (Maryland, Nebraska and Vermont[39]) expressly exempt commercial vehicles, probably including taxicabs.

The other three states (Georgia, Michigan and Virginia[40]) apply their laws only to private passenger vehicles, a phrase which may or may not include taxicabs.

Three jurisdictions (Nevada, New York and District of Columbia), like the Code, authorize the commissioner of motor vehicles to exempt certain vehicles or vehicle seating positions from seat belt requirements.

Seven of the 36 jurisdictions have passenger restraint equipment requirements which apply to some vehicles other than passenger cars. Five of these six laws (Iowa, Massachusetts, Minnesota, New York and Rhode Island) expressly apply to school buses. The California law includes requirements for fire fighting vehicles and driver education vehicles. The Iowa law includes requirements for "pickups" (pickup trucks) and for school buses. Minnesota has a requirement specifically applicable to school buses. The New York law applies to all kinds of motor vehicles, without any express exceptions. New York also has a special requirement specifically applicable to school buses. The Rhode Island law contains a requirement applicable to buses, including school buses, and to trackless trolleys and authorized emergency vehicles. The Texas law applies to all motor vehicles which are subject to inspection and which were originally equipped by the manufacturer with seat belt anchorages, which could include almost all kinds of motor vehicles.[41]

In summary, 35 states have seat belt requirements that generally apply only to passenger cars. At least three, and no more than nine, states may exempt taxicabs from such requirements, while five states extend their requirements to cover some additional vehicles besides passenger cars, and two other states impose some requirements on almost all kinds of motor vehicles.

The 16 states that do not as of January 1, 1972, have laws expressly requiring seat belts in any motor vehicle are:

Alabama	Delaware	Kentucky	South Carolina
Arizona	Florida	Louisiana	South Dakota
Arkansas	Hawaii	New Hampshire	Utah
Colorado	Idaho	Pennsylvania	Wyoming

Date of Manufacture

Not only the type of vehicle but its date of manufacture is significant in considering state seat belt requirements. Legislatures have generally been reluctant to require retrofitting

a large number of vehicles with seat belts and have thus required belts only on new vehicles manufactured after a specified date. The following Table summarizes the passenger restraint equipment requirements of the UVC, state laws and federal regulations, in approximate chronological order with respect to the requirement applicability date:

TABLE: SUMMARY OF SEAT BELT REQUIREMENTS

Jurisdiction	Applicability Date*	Summary of Requirement
Illinois	1961 model year[42/]	Two seat belts in front seat.
Wisconsin	1962 model year	Safety belts in left and right front seats.
California	January 1, 1962	Two seat belts in front seat.
Mississippi	1963 model year	Safety belts in left and right front seats.
Virginia	1963 model year	Safety belts for front seats.
Kentucky	January 1, 1963	Anchorage units for front seat belts.
Indiana	1964 model year	Safety belts for front seat.
Nebraska	1964 model year	Two safety belts in front seat.
New Mexico	1964 model year	Safety belts in left and right front seats.
Rhode Island	1964 model year	Safety belts in left and right front seats.
Tennessee	1964 model year	Safety belts in left and right front seats.
Vermont	1964 model year	Safety belts in left and right front seats.
Connecticut	January 1, 1964	Two safety belts in front seat.
Georgia	January 1, 1964	Two safety belts in front seat.
Minnesota	January 1, 1964	Seat belts in left and right front seats.
North Carolina	January 1, 1964	Two seat belts for front seat.
Washington	January 1, 1964	Seat belts on front seats.
Maryland	June 1, 1964	Two seat belts in front seat.

Jurisdiction	Applicability Date*	Summary of Requirement
Missouri	June 30, 1964; 1965 model year	Two seat belts in front seat.
New York	June 30, 1964; 1965 model year	Two safety belts for front seat.
Oregon	November 1, 1964[43/]	Safety belts for driver and at least one passenger.
Massachusetts	1965 model year	Two safety belts for front seat.
Michigan	January 1, 1965	Safety belts for driver and one other front seat passenger.
West Virginia	January 1, 1965	Safety belts for front seat.
Uniform Vehicle Code	January 1, 1965	Two lap belts for front seat.
Iowa	1966 model year	Two safety belts in front seat.
Maine	1966 model year	Safety belts in left and right front seats.
Montana	1966 model year	Safety belts in left and right front seats.
Oklahoma	1966 model year	Safety belts in left and right front seats.
District of Columbia	1966 model year	Two safety belts in front seat.
Alaska	January 1, 1966	Two safety belts in front seat.
Ohio	January 1, 1966[44/]	Two safety belts in front seat.
North Dakota	January 1, 1966	Safety belts in left and right front seats.
New York	June 30, 1966; 1967 model year	One safety belt for each rear seat passenger position.
New Jersey	July 1, 1966	Two safety belts for front seat.
Kansas	October 1, 1966[45/]	Safety belts for left and right front seats.
California	January 1, 1968	Seat belts for all vehicle seating positions.

Jurisdiction	Applicability Date*	Summary of Requirement
Nevada	January 1, 1968	Two safety belts for front seat.
New York	January 1, 1968	One belt for each passenger seating position.
Virginia	January 1, 1968	Belts required at time of manufacture by federal regulations.
District of Columbia	January 1, 1968	Safety belts in each vehicle seating position.
Uniform Vehicle Code	January 1, 1968	Lap belts in all vehicle seating positions; two shoulder harnesses in front seat.
FMVSS No. 208	January 1, 1968	Lap belts in all vehicle seating positions; shoulder harnesses in front outboard seats.
Maryland	June 1, 1969	Two seat belts for rear seat.
Minnesota	July 1, 1969[46/]	Seat belt for driver's seat in school bus.
Nevada	January 1, 1970	Safety belts for each vehicle passenger seating position.

*Requirement applies to vehicles manufactured after the date shown or to those vehicles of designated and subsequent model years.

Some additional laws not covered in the above Table impose seat belt requirements which may necessitate retrofitting seat belts on certain vehicles. The Texas law, effective August 30, 1971, requires that all motor vehicles originally equipped by the manufacturer with seat belt anchorages must be equipped with front seat belts.[47/] Thus, the law would require retrofitting any vehicles equipped with anchorages but not seat belts as of the effective date of the act. A 1962 Rhode Island law requires that every bus (including school bus), trackless trolley coach and authorized emergency vehicle, when operated on the highways, must be equipped with a driver's seat safety belt. Vehicles not

in compliance as of the effective date of the act would have to be retrofitted with a seat belt. A 1968 New York law provides that it is unlawful for anyone engaged in the business of selling or leasing motor vehicles to sell or lease any used motor vehicle manufactured after June 30, 1962, and designated as a 1963 or subsequent model year, unless it is equipped with two safety belts for the front seat.[48] Since the law is retroactive, applying to vehicles already in circulation at the time of the enactment, it would require retrofitting noncomplying vehicles before they could be sold as used vehicles by a dealer. Retrofitting was also required by the 1965 Illinois law applicable to 1961 or newer model year vehicles and by recent regulations of the Bureau of Motor Carrier Safety which apply to a significant number of trucks and buses made after January 1, 1965.

A second New York law, effective September 1, 1969, requires every school bus to be equipped with a driver's seat safety belt.[49] School buses not so equipped as of the effective date of the act would have to be retrofitted with seat belts. A 1963 Massachusetts law requires all persons licensed to operate driver training schools to equip the front seat of training vehicles with safety belts for the instructor and student. A 1971 Massachusetts law requires every school bus to be equipped with a seat belt for the operator. A 1961 California law requires seat belts in driver education vehicles, and a 1963 California law requires seat belts in firefighting vehicles. These laws would require retrofitting any vehicles not properly equipped as of the effective date of the law.

Where Devices Are Required

The foregoing Table summarizes the more important seat belt requirements. It is evident from this Table that of the 36 jurisdictions with restraint equipment requirements, 29 require only that the vehicle must be equipped with safety belts for the front seat, and one other (Kentucky) requires only anchorage units for the front seat:

Alaska	Massachusetts	New Jersey	Rhode Island
Connecticut	Michigan	New Mexico	Tennessee
Georgia	Minnesota	North Carolina[50]	Texas
Illinois	Mississippi	North Dakota	Vermont
Indiana	Missouri	Ohio	Washington
Iowa	Montana	Oklahoma	West Virginia
Kansas	Nebraska	Oregon	Wisconsin
Maine			

Only five jurisdictions (California,[51/] Nevada, New York, Virginia and the District of Columbia) require belts in all passenger seating positions. One state (Maryland) requires two belts in the front seat and two in the rear seat. Of the 35 jurisdictions with seat belt requirements, only one (Nevada) specifically requires shoulder harnesses in any vehicle seating positions, although the Virginia law would also have this effect under existing federal standards. This section of the Commentary will review all of these requirements in greater detail.

As previously noted, the Kentucky law requires anchorage units for front seat belts. All 35 of the jurisdictions with laws requiring seat belts appear to require two belts in the front seat of some vehicles, although in six of these jurisdictions a more stringent requirement applies to vehicles currently being manufactured. Twelve of these 35 specifically require belts in the left and right front seating positions:

Kansas	Mississippi	North Dakota	Tennessee
Maine	Montana	Oklahoma	Vermont
Minnesota	New Mexico	Rhode Island	Wisconsin

Sixteen more jurisdictions specifically require two belts in the front seat but do not require that they be in any particular seating position:

Alaska	Illinois	Missouri	New York
California	Iowa	Nebraska	North Carolina
Connecticut	Maryland	Nevada	Ohio
Georgia	Massachusetts	New Jersey	District of Columbia

Five of these 16, however, apply this requirement only to vehicles manufactured prior to a specified date. For vehicles manufactured subsequent to that date these five jurisdictions (California, Maryland, Nevada, New York and District of Columbia) have more stringent requirements as discussed below.

Two additional states (Michigan and Oregon) clearly require two belts in the front seat, one of which must be in the driver's seat. These states require belts for the driver and for one front seat passenger.

Of the 35 states, the remaining four (Indiana, Virginia, Washington and West Virginia) do not specify any particular number but do require belts (plural) in the front seat. These laws

appear clearly to require at least two belts, and might be construed to require belts in each front seating position. One of these four (Virginia) applies this requirement only to vehicles manufactured prior to a specified date and vehicles manufactured after that date must meet a more stringent requirement as discussed below.

Six jurisdictions (California, Maryland, Nevada, New York, Virginia and District of Columbia), as noted above, impose more stringent requirements on newer vehicles. Two of these states (Maryland and New York) have requirements for belts in rear seats. Maryland requires two while New York requires a belt for each rear seating position. The New York requirement is not applicable to newer vehicles which must meet additional requirements.

Five jurisdictions (California, Nevada, New York, Virginia and District of Columbia) require newer vehicles to be equipped with belts for each seating position in the vehicle. Four of these laws directly impose the requirements while the Virginia law is indirect, requiring all belts required by federal standards at the time the vehicle was manufactured. Under current federal standards, the Virginia law thus requires belts in all vehicle seating positions.

When Devices Are Required

Under the Uniform Vehicle Code provision, all vehicles in the described classes are required to be equipped with lap belts or with lap and shoulder belts at all times the vehicle is being driven or moved on any highway.[52] The requirement applies to all vehicles, including those registered in another jurisdiction.[53] It is a misdemeanor for anyone to drive or move, or for any owner to cause or knowingly permit to be driven or moved, any noncomplying vehicle on any highway.[54] Uniformed police officers may stop a vehicle and inspect it at any time upon reasonable cause to believe it is not equipped as required by the Code.[55] The Code also contains provisions under which vehicles registered in the Code jurisdiction are required to submit to a periodic inspection with respect to such items of equipment as designated by the commissioner of motor vehicles.[56] Assuming that seat belt equipment was so designated, the Code's seat belt requirements would be enforceable through the periodic inspection procedures. The Code does not prohibit the manufacture or sale of a noncomplying vehicle, however.[57]

The incidence of the federal motor vehicle safety standard is very different.[58] The National Traffic and Motor Vehicle Safety Act of 1966 provides that it is illegal to manufacture or sell a new motor vehicle which fails to conform with an applicable motor vehicle safety standard.[59] The motor vehicle safety standards apply only to manufacturers, distributors and dealers and do not apply after the first sale to a consumer. Any failure to maintain equipment required by federal motor vehicle safety standards or any removal of that equipment by a consumer does not constitute a violation of the federal law.

The laws in the 36 jurisdictions with passenger restraint equipment requirements vary substantially with regard to the incidence of the requirement. Some, like the Code, impose a continuing requirement that vehicles in the described class must be equipped with the specified belts whenever operated or moved on the highways. Others impose a requirement which is applicable only at certain specific times such as when the vehicle is registered or when it is sold. Some are rather limited, applying the requirement only at the time of a sale by a dealer or, like FMVSS No. 208, only at the time of a first sale of a new vehicle to a consumer. In many cases the language used in the laws is ambiguous in this respect, hence the classifications which follow are highly interpretive.[60]

Seven states have laws which, like the Code, impose a continuous requirement that a described class of vehicles must be equipped with certain seat belt equipment:

Alaska[61]	Maryland[63]	Texas[66]
Iowa[62]	Massachusetts[64]	Virginia[67]
	Minnesota[65]	

Six of these states (all except Virginia) also have provisions concerning the scope and effect of equipment requirements which provide that it is a misdemeanor for anyone to drive or move, or for an owner to cause or knowingly permit to be driven or moved, any noncomplying vehicle on any highway. Thus the seat belt requirements in these six states can be enforced against an owner or any operator whenever the vehicle is on the highway. It is unclear when and against whom the Virginia requirement can be enforced.

The seat belt requirements of eight other states provide that noncomplying vehicles shall not be operated on the highways.

These laws have virtually the same effect as the Code and the states discussed above. These eight states are:

Illinois[68]	Nebraska[70]	New Jersey[72]	Vermont[74]
Montana[69]	Nevada[71]	New York[73]	Wisconsin[75]

The laws in seven additional states provide that noncomplying vehicles shall not be registered:

Connecticut[76]	Kentucky[78]	Rhode Island[81]
Kansas[77]	Missouri[79]	Washington[82]
	North Carolina[80]	

These requirements may be enforceable only at the time of annual vehicle registration. This is especially true with regard to the North Carolina law which specifically provides that seat belt equipment is required "at the time of registration."[80] It is possible, however, that any of these laws might be indirectly enforceable at any time of year on the theory that a removal of the seat belt equipment would invalidate or void the registration. This is particularly true as to the Kansas[77] and Rhode Island[81] laws since these laws specifically provide that the registration of a noncomplying vehicle may be suspended until the vehicle is equipped to conform with the requirement. It would nonetheless seem preferable to require the presence of belts at all times.

One other jurisdiction, the District of Columbia, has a similar law which requires seat belts as a condition for approval at an annual vehicle inspection.[83] Such a requirement appears enforceable only through the inspection procedures.

The remaining 13 laws requiring seat belts vary substantially from the Code in that the requirement is applicable only at the time of a sale (or in some states, a lease) of the vehicle. Eight of these states impose seat belt requirements on both the buyer and seller at any retail sale or transfer of the vehicle involving a state resident, and on the parties to any leasing arrangement involving a state resident. These laws generally provide as follows:

> It is unlawful for any person to buy, sell, lease, trade, or transfer from or to a state resident, at retail, an automobile (which does not comply with seat belt requirements).

The eight states with laws like this are:

Indiana	Mississippi	North Dakota	Oklahoma[85]
Maine	New Mexico	Ohio[84]	Tennessee

One additional state (Michigan) has a law which applies at the time of any sale, but the law would not cover other transfers or leases.[86]

Four additional states have laws which apply only at the time of a sale by a dealer, and are enforceable only against the dealer making the sale. These four states are:

California[87]	Oregon[89]
Georgia[88]	West Virginia[90]

Two of these laws (Georgia and Oregon) appear applicable only to the first sale to a consumer of a new motor vehicle. The incidence of these two laws is similar to that of the federal motor vehicle safety standards since the law imposes no requirements applicable after the first sale.

In addition to the 13 states just discussed, 13 other states which prohibit the operation or registration of a noncomplying vehicle additionally prohibit a sale of such a vehicle.[91] These 13 states are:

Connecticut	Maryland	Nebraska	Rhode Island[93]
Illinois	Missouri	New Jersey	Washington
Kansas	Montana[93]	New York	Wisconsin[93]
Kentucky[92]			

Thus a total of 26 states prohibit the sale of a vehicle not complying with passenger restraint equipment requirements.

STANDARDS AND SPECIFICATIONS

The Uniform Vehicle Code requires that all seat belts and shoulder harnesses sold for use in motor vehicles, including both belts or harnesses required by the Code in certain motor vehicles and any belts or harnesses installed in a motor vehicle although not required, to comply with minimum standards and specifications current as of the time of sale of the equipment.[94] These minimum standards and specifications are to be those of either the state commissioner of motor vehicles or of the United States Department of Transportation.[95]

Thirty-five jurisdictions have laws which similarly impose standards and specifications for seat belt equipment:

Alabama[96]	Maryland	New Mexico	South Dakota[96]
Alaska	Michigan	New York	Tennessee
Arkansas[96]	Minnesota	North Carolina	Utah[96]
California	Mississippi	North Dakota	Virginia
Connecticut	Missouri	Ohio	Washington
Illinois	Montana	Oklahoma	West Virginia
Indiana	Nebraska	Oregon	Wisconsin
Iowa	Nevada	Pennsylvania[96]	District of Columbia
Kansas	New Jersey	Rhode Island	

Only five (Georgia, Maine, Massachusetts, Texas and Vermont) of the 35 jurisdictions which require seat belts in certain vehicles have no provision specifically requiring the seat belt equipment to conform with standards and specifications. These states may have general provisions under which all motor vehicle safety equipment is subject to administrative approval, however.

Of the 35 jurisdictions which specifically require seat belt equipment to comply with certain standards or specifications, 22 require all seat belt equipment to be of a type approved by a specified state administrative agency:

Alabama[97]	Montana[97]	Oklahoma[97]	Virginia[98]
California	Nebraska	Pennsylvania	Washington[98]
Indiana[97]	New Jersey[98]	Rhode Island[97]	Wisconsin[97]
Iowa	New Mexico[97]	South Dakota	District of Columbia[99]
Kansas	North Carolina	Tennessee[97]	
Mississippi[97]	North Dakota[98]	Utah[98]	

Five other states require the equipment to meet standards and specifications promulgated by a specified administrative agency, but do not specifically require approval of the device by that agency.

Illinois	Michigan[100]	New York
Maryland[100]		Oregon

One state (Nevada) requires seat belts to conform with standards and specifications of the United States Department of Transportation. Six other jurisdictions require seat belt equipment to conform with standards and specifications promulgated by the Society of Automotive Engineers.[101]

Alaska	Minnesota	Ohio
Arkansas	Missouri	West Virginia

The one remaining state (Connecticut) provides in the law that seat belts and anchorages must have a loop strength of not less than 4000 lbs., and that after receiving such a load the buckle must be capable of being released with one hand with a pull of less than 45 lbs.

Eight of the above states, like Connecticut, provide some seat belt standards in the law itself. The statutory specifications in four of these states (Illinois, Iowa, Utah and Virginia) require the seat belts to prevent or materially reduce the movement of a person in the event of a collision or other accident. The Iowa law additionally requires the belt to be of such size as to accommodate an adult. The Ohio law provides that anchorage units for seat belts must have a loop strength of not less than 4000 lbs. The Rhode Island law regarding seat belt equipment for the driver's seat in buses, trolleys and emergency vehicles, and the North Carolina law both require that seat belts and anchorages have a loop strength of not less than 5000 pounds and that after receiving such a load the buckle must be capable of being released by one hand with a pull of less than 45 lbs. The South Dakota law provides that administrative specifications must include a requirement that approved devices shall be capable of withstanding a minimum load of 5000 lbs.

LAWS REQUIRING USE OF SEAT BELTS

Existing Laws

The Uniform Vehicle Code has no provision requiring the use of seat belts by the occupants of any vehicle. Laws requiring the use of seat belts by the occupants of certain vehicles have been enacted in five states:

California	Minnesota	New York
Massachusetts		Rhode Island

The California law provides that it is unlawful for any driver or passenger in a driver training vehicle to operate or ride in such vehicle while it is being used for driver training without using an available seat belt in the proper manner. The Massachusetts, Minnesota and New York laws make it illegal for the driver of a school bus to operate without using an available seat belt. The Rhode Island law applies to every person driving

a bus (including school bus), trolley or authorized emergency vehicle. The law requires that such a driver "use and have his body anchored by" an available seat belt. As noted previously with regard to each of these states, a complementing equipment law requires these vehicles to be equipped with belts at appropriate locations, although the Minnesota law does not require retrofitting and would apply only to new school buses purchased after July 1, 1969.[102]

On the other hand, at least two states (Iowa and Maine) have adopted, in conjunction with seat belt equipment requirements, provisions which make it clear that there is no legal requirement to use seat belts and that failure to use the belts is not a crime. The Iowa law specifically provides that a failure to use belts is not a crime or public offense. The Maine law is less direct, but provides that the fact of failure to use belts is not admissible in evidence in any criminal trial arising out of an automobile accident. This would preclude any criminal prosecution for failure to use seat belts arising out of an accident. Neither of these laws is strictly necessary, of course, since nothing in the laws of either state suggests a requirement for use of the belts.

A requirement that drivers use available seat belts is also found in the Bureau of Motor Carrier Safety Regulations.[103] These Regulations, which apply generally to trucks and buses in interstate commerce,[104] require that a motor vehicle which is equipped with a driver's seat belt shall not be driven unless the driver has properly restrained himself with the seat belt. As noted previously the Regulations also contain equipment requirements for driver's seat belts for certain vehicles.[105]

In addition to these state laws and federal regulations which are directed at specific vehicles, at least one municipal ordinance has been adopted which is directed at all occupants of all vehicles operating within the city. A 1966 ordinance in Brooklyn, Ohio, requires the use of available seat belts by the driver and all passengers in all vehicles.[106]

Laws directed generally at all occupants of all vehicles have also been enacted or promulgated in several foreign jurisdictions. The State of Victoria, Australia enacted such a law on December 22, 1970. Similar laws were subsequently enacted or promulgated in the remaining states in Australia and by New Zealand.

The New Zealand law grants broad regulatory authority to an administrative official to require persons 15 years of age and older occupying a seat which is equipped with a seat belt to wear that belt while the vehicle is moving forward, and authorizing exemptions for specified persons or vehicles or classes of persons or vehicles.[107] Such regulations have been promulgated and became effective June 1, 1972.[108]

In Australia seat belt use has been required by law (South Australia and Victoria), by regulation (New South Wales, Queensland, Tasmania and Western Australia) or by ordinance (Australian Capital Territory and Northern Territory).[109] These laws, regulations and ordinances (hereinafter referred to as laws) are generally quite detailed and specific regarding the requirement for use of seat belts and various exemptions from that requirement. All of the Australian laws appear to require the use of any available seat belt, whether or not it is required equipment on the vehicle, and without distinction between lap belts and shoulder belts.[110] Vehicle occupants appear to be required to wear whatever restraint equipment is available in the seat. The Australian laws generally provide that all occupants in a moving vehicle who are sitting in a seat equipped with a seat belt must wear the belt, properly adjusted and securely fastened. One of the laws (Australian Capital Territory) requires use of belts not only when the vehicle is in motion but also whenever its engine is running while on a public street. If the vehicle is stationary, however, and if the engine is running for a purpose other than to put the vehicle in motion, use of the belts is not required.[111] Six of the Australian laws provide some exemption for vehicles which are being driven backwards. Two of the laws (South Australia and Western Australia) provide exemptions for all occupants in a vehicle being driven backward. Three of the laws (New South Wales, Queensland and Tasmania) provide exemptions only for drivers who are driving backward. One other jurisdiction (Australia Capital Territory) appears to exempt drivers who are driving backwards.[112] Two of the laws (Northern Territory and Victoria) contain no exemption for drivers or passengers in a vehicle being driven backwards.

Seven of the Australian laws (all except Victoria) contain exemptions directed specifically at persons with medical or other physical problems. All of these seven laws exempt persons who are unable for medical reasons to wear seat belts. One of these laws (Northern Territory) exempts all persons with a physical disability which makes it impractical or undesirable to wear a seat belt. Apparently under this law no certification by a

physician as to the condition is required. The other six laws (Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Western Australia) all require a certification by a physician as to the condition warranting exemption. The Australian Capital Territory law provides that such a certificate is a defense to a prosecution rather than constituting an exemption. The certificate of exemption in Tasmania is issued by an administrative official after he is satisfied, upon certification by a physician, that the condition warrants an exemption. Physicians themselves issue the exemption certificates in the other jurisdictions. Four of the laws exempt persons with certain physical problems other than medical conditions. Three (New South Wales, Queensland and Western Australia) exempt persons who have a physician's certificate that, due to the person's size, build or other physical characteristics, he would be unable to drive safely while wearning seat belts, or that, due to such size, build or characteristics, it would be unreasonable to require the person to wear a seat belt. One other law (Australian Capital Territory) provides that it is a defense to a prosecution that a person has been issued a doctor's certificate that it is undesirable by reason of the person's physical characteristics to require the use of a belt. It is also a defense, as to violations by drivers, that the driver has been issued a certificate by a specified administrative official that it is impractical by reason of the person's physical characteristics to safely drive a particular vehicle or kind of vehicle.

Where certificates are required for exemptions by the laws discussed above, the certificate must be carried or in the person's possession under three laws (New South Wales, Tasmania and Western Australia); the person is required merely to be the holder of a certificate under another law (Queensland); another law (South Australia) requires the certificate to be produced for police inspection within 48 hours; and another law (Australian Capital Territory) apparently would require the certificate to be produced in court to establish the defense to any prosecution.

Six of the Australian laws (all except Australian Capital Territory and Western Australia) also provide for exemptions granted by administrative officials. Three of these laws (Northern Territory, South Australia and Victoria) provide for exemption of classes of persons by regulation. Two of these (Northern Territory and Victoria) allow such exemptions where requiring use of the belts would be "impractical, undesirable or inexpedient," while the other law (South Australia) provides

no statutory guidelines for the exemptions. Six laws provide for exemption for any person certified by an administrative official as being exempt. Four of these (New South Wales, Northern Territory, Queensland and South Australia) provide no statutory guidelines, while two (Tasmania and Victoria) allow such exemptions to be granted as to persons for whom it would be "impractical, undesirable or inexpedient" to require use of the belts.

The Australian Capital Territory law provides that it is a defense to a prosecution that the defendant holds a certificate or other document issued by another Australian jurisdiction which would have exempted the defendant if his act or omission had been performed in the jurisdiction which issued the certificate. This appears to be the only attempt in the Australian laws to deal with the inter-jurisdictional effect of the seat belt use requirement and the various exemptions to the requirement.

Five of the Australian laws exempt certain delivery vehicles from the compulsory use requirements. One (Tasmania) exempts persons engaged in delivering bread, milk, groceries, vegetables, meat or similar commodities provided that the vehicle does not exceed 15 miles per hour. Three others (New South Wales, Queensland and Western Australia) exempt persons actually engaged in work requiring them to alight and re-enter the vehicle at frequent intervals, provided the vehicle does not exceed 15 miles per hour. This same fact may be established as a defense to a prosecution under the law in the Australian Capital Territory.

Four of the Australian jurisdictions have exemptions based upon age. Three (New South Wales, Queensland and Western Australia) exempt persons under the age of eight years, while one (Australian Capital Territory) provides that it is a defense to a prosecution that the alleged violator is under 14. Two jurisdictions (New South Wales and Western Australia) also exempt passengers (not drivers) over the age of 70 years, while one (Australian Capital Territory) provides that it is a defense if the alleged violator is age 71 or over.

Three of the Australian laws have other interesting exemptions as follows: one jurisdiction (New South Wales) exempts the driver or passenger in a taxicab. Another jurisdiction (Australian Capital Territory) provides that it is a defense

to a prosecution if the defendant establishes that his failure to comply with the law was, under the circumstances, not unreasonable. Another jurisdiction (South Australia) provides that in any prosecution if the court believes that the offense is proved but, in the particular case, is of such trifling nature that it is inexpedient to inflict any punishment, it may dismiss the complaint without convicting the defendant, and may, if the court thinks fit, order the defendant to pay costs.

One other aspect of the Australian laws warrants discussion. Four of the jurisdictions (Australian Capital Territory, New South Wales, Queensland and Western Australia) have laws which require a passenger in a vehicle to sit in a seat which is equipped with a seat belt (in preference to a seat not so equipped) unless all the seats which are so equipped are occupied. Such a provision is obviously necessary because in a vehicle which has some seating positions equipped with belts and some not so equipped a compulsory use law could otherwise be easily thwarted by merely sitting in a seat not equipped with a belt. It is probably not desirable, however, to require a person to occupy a front seat position (even if equipped with a belt) in preference to a back seat position (even without a belt) because shifting from back to front seat would be highly inconvenient under some circumstances, and because statistics suggest that the front seat is a considerably more dangerous location in an accident than is the back seat. Thus, all of these four laws contain provisions intended to negate any requirement that a person move from a rear to a front seat position in order to sit in a seat equipped with a belt. The Australian Capital Territory law provides that a person may not occupy a seat not equipped with a belt abreast of an unoccupied seat which is so equipped. The New South Wales law prohibits sitting in a seat not equipped with a belt if any available seat is so equipped, but exempts persons sitting in the back seat. A person in the back seat could apparently sit at an unequipped position even if a back seat equipped position is unoccupied. The Queensland provision is similar to the New South Wales provision but exempts persons in a rear seat only where none of the rear seat positions are equipped with belts. Where one or more, but not all, rear seat positions are equipped with belts and where all those equipped seats are clearly occupied, a person might be required under the Queensland law to move to the front seat to an unoccupied seat equipped with a belt. The Western Australia law generally prohibits sitting in a seat not equipped with a belt if

any equipped seat is unoccupied, but provides that a person may occupy a rear seat which is not equipped with a belt in preference to a front seat which is so equipped, provided that no equipped rear seats are unoccupied.

Proposed Laws

In a recent proposed revision of the Highway Safety Program Standards,[113] a provision is included which would recommend that states adopt mandatory seat belt use laws:

> Each state shall enact a statutory provision providing for mandatory wearing of seat belts, including both lap and shoulder belts, in any vehicle required by Federal or State law or regulation to be equipped with such seat belts either at the time of its manufacture or while the vehicle is in use.[114]

Explanatory material accompanying the proposed standards included the following with respect to the mandatory use provision:

> Another traffic provision added by NHTSA would be a requirement that the use of seatbelts be made mandatory. NHTSA has been very active in developing motor vehicle safety standards on both active and passive restraints (see 49 CFR 571.208, 571.209). Evidence indicates that use of the seatbelt system required to be installed in motor vehicles since 1967 is extremely low, and that increased usage could save thousands of lives. A similar provision has been adopted and implemented with some success in certain Australian jurisdictions, and such legislation is currently pending in several States. NHTSA believes that such a provision is important even in view of the development of passive restraint systems, since for many years a large percentage of the vehicle population will continue to be equipped with only the seatbelt system. The legislation contemplated by the proposed standard would require mandatory usage of whatever system (either lap belt only or lap and shoulder belt) is required by Federal motor vehicle safety standards to be installed in the vehicle as manufactured; and use of any system that is required to be installed in the vehicle on the road (for example in a commercial vehicle) by State or Federal law.[115]

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In addition, the National Committee on Uniform Traffic Laws and Ordinances is preparing a "Proposed Law Requiring Use of Seat and Shoulder Belts" under a special grant from the National Safety Council. It is anticipated that work on this model law will be completed on October 13, 1972, and that copies can be secured from the National Safety Council, 425 North Michigan Avenue, Chicago, Illinois 60611. As issued on August 29, 1972, the second draft of this "Proposed Law" would require use of available belts by most drivers of vehicles on a highway. Other passengers would be required to use lap and shoulder belts when their use would be possible, safe and reasonable.

FAILURE TO USE AS NEGLIGENCE

As more vehicles are equipped with passenger restraint devices, a substantial controversy has developed regarding whether there is any duty to wear available seat belts and the consequences of a failure to do so. Statutory provisions and judicial decisions relevant to the issues involved in this controversy are discussed in this section of the Commentary.

Statutory Provisions

Generally one is held to the standard of a reasonable man in determining whether certain conduct creates an unreasonable risk of harm.[116] When the legislature enacts a statute, however, it dictates a standard of conduct to which all must conform. A violation of such a statute is negligent conduct.[117]

None of the states has a law generally requiring all vehicle occupants to use available seat belts. Two states (Iowa and Maine) even have express provisions to the effect that failure to use the belts is not a crime.[118] Five states, however, do require the use of belts by certain occupants of specific kinds of vehicles.[119] These five states are California, Massachusetts, Minnesota, New York and Rhode Island.

Five jurisdictions (Iowa, Maine, Minnesota, Tennessee and Virginia) have adopted provisions to assure than any failure to use available seat belts will have no effect upon the question of negligence. Three of these (Iowa,[120] Maine[121] and Minnesota[122]) provide that evidence of a failure to use seat

belts is not admissible in a law suit brought to recover damages resulting from a crash. The other two (Tennessee[123] and Virginia[124]) specifically provide that such a failure to wear seat belts shall not constitute negligence. The Tennessee law additionally provides that such a failure may not be considered in mitigation of damages in any civil law suit.[125]

Minnesota, thus, has both a law imposing a duty to use seat belts on certain vehicle occupants, and a law providing that evidence of a violation is inadmissible in a civil law suit. The duty imposed by the Minnesota law, therefore, has criminal but not civil sanctions behind it.

In summary, of the nine states which have laws specifically dealing with the legal consequences of failing to wear an available seat belt, four (California, Massachusetts, New York and Rhode Island) impose a duty on certain vehicle occupants to wear belts and would probably consider a violation of that duty to be negligence. In the remaining five states (Iowa, Maine, Minnesota, Tennessee and Virginia) a failure to wear a seat belt will not be considered negligence, and in four of the five (all but Virginia[126]) will not be considered in mitigation of damages in a suit brought to recover damages.

Judicial Decisions

Whether it is negligent to fail to use available seat belts has also been the subject of considerable litigation. Courts have generally held that a failure to use an available seat belt does not constitute such contributory negligence as would preclude any recovery for injuries. However, nonuse of belts may be considered as a factor reducing recoverable damages. The cases have generally been discussed in terms of whether there is a duty to use seat belts, and whether a failure to use seat belts bears sufficient causal relationship to the accident or to any resulting injuries to justify denying or reducing any recovery.

A substantial number of courts have held that there is no duty to wear available seat belts.[127] These courts have observed that legislative enactments requiring vehicles to be equipped with seat belts do not impose any duty to wear the belts,[128] and that if such a duty is to be imposed it must be done by the legislature rather than the courts.[129] Some have stressed that there is still conflicting evidence about the value of seat belts,[130] that there is some evidence that seat belts may cause or aggravate certain injuries,[131] that

some people are afraid to wear seat belts because they fear being trapped in a wrecked or submerged car,[132] and that statistics indicate a very low level of usage.[133] Thus, the courts have generally been unwilling to rule that a reasonable man in the exercise of ordinary care for his own protection, should wear seat belts.

One court also reached the conclusion that there was no duty to use seat belts in a case where the allged unreasonable risk created by the failure to use the belts was to another person. In Quinius v. Estrada,[134] vehicle A negligently collided with vehicle B, causing the unbelted driver of vehicle B to lose control, whereupon vehicle B collided with vehicle C. It was argued that had the driver in vehicle B been wearing her available seat belt, the second collision would not have occurred, and that the driver of vehicle B was, therefore, under a duty to the driver of vehicle C to wear the belt. The court held that there was no duty to wear seat belts because it was not reasonably foreseeable that a failure to use a seat belt would result in a failure to regain control after a collision negligently caused by another. The court refused to recognize the crash prevention potential of a driver's lap belt,[135] noting that the wearing of seat belts has relevance only to the safety of the person wearing the belt. The court took judicial notice of this fact as a matter of general knowledge.

Some courts have recognized that a duty to wear seat belts may arise under certain circumstances, such as where a particularly dangerous trip is undertaken, but in light of all the factors noted above the exercise of reasonable care does not require the use of seat belts under all circumstances.[136] Where courts have found that there is no duty to wear seat belts, they have ruled that a failure to wear them does not constitute contributory negligence or any grounds for mitigation of recoverable damages.

A minority of courts have ruled or suggested that there is a duty to use seat belts. Several courts have ruled that there is a duty, based on common law standards of ordinary care independent of any statutory mandate, to use available seat belts.[137] Several other courts have ruled that it is a question of fact whether or not there is such a duty.[138]

A substantial number of cases have been discussed by the courts in terms of the causal connection between the failure to use seat belts and the resulting accident or injury. It has been held that a failure to use a seat belt is not contributory negligence such as would bar all recovery because the failure to wear a belt did not contribute in any way to the causation of the accident.[139] This is particularly clear where the injured plaintiff was a passenger with no physical control over the vehicle's operation.[140] An act or omission alleged to constitute contributory negligence will bar recovery only if it contributed to the causation of the accident which resulted in the injury.[141] An act or omission which merely increases or adds to the extent of the injury will not bar recovery, although such an act or omission may be a relevant factor in mitigation of damages.[142] The question of use or nonuse of seat belts is generally irrelevant to the question of liability but may be relevant to the damage question.[143]

In terms of the damage question, the seat belt problem does not fit easily into any standard legal classifications. The doctrine of avoidable consequences appears most nearly relevant to the problem. Under this doctrine, recovery is denied for any damages which could have been avoided by reasonable conduct on the part of the injured party.[144] A person injured by the negligence of another has a duty to use reasonable care to obtain treatment for his injuries to mitigate his damages, for example. The doctrine is closely related to contributory negligence except that avoidable consequences usually involve unreasonable conduct after the injury while contributory negligence usually refers to conduct which occurs before and contributes to the injury.[145] Unfortunately, the failure to fasten a seat belt always occurs prior to the injury, and thus the seat belt problem is not clearly covered by the doctrine of avoidable consequences. Nevertheless, some courts treat a failure to use seat belts as an avoidable consequence problem, holding that a failure to wear available seat belts which results in an aggravation of injuries may result in a reduction of recoverable damages.[146] These courts generally require evidence establishing a causal relationship between the failure to wear the belts and the injuries sustained.[147] Expert testimony is generally required to establish the extent to which injuries were aggravated by the failure to use seat belts.[148] It is recognized that such an apportionment of damages is a difficult task, and the party seeking such an apportionment has a heavy burden of proof regarding the

effect of the failure to use the belts on the injuries.[149] The courts refuse to apportion damages on the basis of speculation in the absence of such evidence.[150] A few courts have refused to allow evidence of failure to use belts to mitigate damages, on the grounds that since the failure occurred prior to the injury the doctrine of avoidable consequences does not apply.[151]

To summarize, in the absence of a statute requiring use, there is no duty to wear available seat belts so a failure to wear them is neither contributory negligence nor grounds for diminishing damages. A minority of court decisions recognize that a duty may exist under some circumstances. Although a breach of that duty does not constitute contributory negligence, it is recognized that if clear evidence establishes that the failure to use belts aggravated injuries, such failure will result in a reduction of damages one is entitled to recover.

FEDERAL PREEMPTION

The Federal Motor Vehicle Safety Standard (FMVSS) relating to seat belts and other restraint systems was issued under the National Traffic and Motor Vehicle Safety Act.[152] One section in this Act provides as follows:

> Whenever a federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment, any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.[153]

Thus, state standards applicable to the same performance aspect of a motor vehicle must be "identical" to a federal standard or they would violate this section. In the latter instance, it is assumed the non-identical state standards would be invalidated or, as commonly stated, "preempted." It is also assumed that state laws requiring equipment are "standards" within the meaning of the Act.

The precise effect of FMVSS No. 208 upon state laws requiring seat belts is unclear. It appears that none of the laws is "identical" in the sense of literally duplicating the original or the revised Federal Standard. Most state laws require lap belts in front seating positions while the original Federal Standard also required lap belts in rear seats and shoulder belts in front. None of the state laws may even be in substantial conformity with the latest revisions in this Federal Standard because state laws require seat belts while the Standard will impose performance criteria which may be met by devices other than belts, such as air bags.[154/]

Whether the Federal Standard invalidates state seat belt laws may also involve the incidence of the laws and the Standard. For instance, it seems safe to assume that the Standard would not affect the many state laws applicable to cars made before January 1, 1968, because it did not apply to such vehicles when they were made. Because the Federal Standard was designed to apply to manufacturers and dealers and can not be enforced against a retail purchaser or user of the vehicle, it would also seem reasonable to assume the Standard's preemptive impact would be similarly limited so that a state law enforceable against owners and other users would not be invalidated by the Standard. However, the position of the National Highway Traffic Safety Administration apparently is that the preemption provisions of the Federal Act apply to all state laws, including those which regulate vehicles after their first retail sale.[155/] This position may be supported by language from the Report of the Senate Commerce Committee dealing with the effect of the Act upon state laws:

> The centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States requires that motor vehicle safety standards be not only strong and adequately enforced, but that they be uniform throughout the country. At the same time, the committee believes that the States should be free to adopt standards identical to the Federal standards, which apply only to the first sale of a new vehicle, so that the states may play a significant role in the vehicle safety field by applying and enforcing standards over the life of the car. Accordingly, state standards are preempted only if they differ from Federal standards applicable to the particular aspect of the vehicle or item of vehicle equipment.[156/]

As noted above, the federal standards invalidate only state safety standards applicable to the "same aspect of performance" of a motor vehicle or item of motor vehicle equipment regulated by a federal standard. This factor in the preemption question has been subject to litigation. The courts have narrowly construed the phrase "same aspect of performance" so as to avoid preemption of state attempts to regulate a supplemental head light even though vehicle lights, including standard head light systems, are regulated by one of the federal standards.[157] This may become a significant factor in the preemption question regarding state seat belt laws, particularly those laws which require belts in driver's seats. Recent accident investigations provide substantial evidence for the proposition that the use of lap belts by drivers can prevent collisions or injuries to other persons.[158] Seat belts hold the driver in proper position where he can maintain control and possibly avoid a crash or lessen the consequences of a crash for other persons. A state law dealing with seat belts in drivers' positions can be said to relate to this accident prevention aspect of performance. The Federal Standard, on the other hand, imposes performance criteria relating to crash protection rather than crash prevention. Thus, a state law dealing with requirements for seat belts in drivers' positions would not appear to be affected by the Federal Standard because the state law deals with a different aspect of performance.

The gravity of invalidating state laws requiring belts or other safety equipment can not be overstated. If states or municipalities should require the presence of seat belts and their use, persons could avoid the use requirement by removing the belts and there would be no ban against such removal because the state law would be invalidated by the Federal Standard and the Standard would not be applicable to removal of such equipment by persons who are not manufacturers or dealers. Another serious consequence of invalidating state equipment laws involves inspection programs. For instance, if a state department of motor vehicles were authorized to inspect seat belts as part of a periodic inspection program only because it is equipment required by state law and that law is invalidated by the Federal Act,[159] then perhaps seat belts could no longer be lawfully inspected.[160] In other words, an interpretation of the federal law which invalidates state laws applicable to drivers and owners because they are not "identical" to

federal standards could have a significant impact on state highway safety programs. Further, extending the Standard's preemptive effect beyond its regulatory reach could create a significant vacuum.

On the other hand, if the federal standards do not invalidate state laws which apply after the first sale, such laws might effectively defeat the federal standards and could place consumers in an undesirable position whenever applicable federal and state standards conflict. It was a sincere desire to keep consumers out of any crossfire resulting from conflicting state laws and federal standards that caused the National Committee on Uniform Traffic Laws and Ordinances to recommend that states avoid such conflicts:

> A state enacting most of the provisions in this chapter or any other law dealing with equipment requirements or performance should ascertain whether a pertinent federal standard has been issued under the National Traffic and Motor Vehicle Safety Act.
>
> If a provision in this chapter or in the laws of any state should be in conflict or be inconsistent with any such federal standard, the National Committee recommends amending the Code and those laws as may be necessary to resolve the difference so as not to penalize the user of a vehicle manufactured and equipped in accordance with those standards. In the absence of any such direct conflict on inconsistency, however, the National Committee urges each state to revise its laws to achieve verbatim or substantial conformity with this chapter.[161]

However, a desire to avoid conflicts between state and federal standards should not be interpreted as an indication that the National Committee necessarily favors literal identity.[162] Safe and efficient movement of traffic should be fostered by state and federal regulations that are in substantial agreement. Little more could be contributed by duplicatory state laws; and duplication of certain federal standards might occasionally be harmful to on-highway regulatory needs.[163]

Clarification of the scope and precise nature of the federal requirement for identity may require action by Congress or interpretation by the courts. To its credit, the National Highway Traffic Safety Administration has indicated that state laws conforming substantially, but not literally, with Federal Motor Vehicle Safety Standards are not preempted:[164]

December 29, 1971

Mr. Edward F. Kearney
Executive Director
National Committee on Uniform Traffic Laws
and Ordinances
955 North L'Enfant Plaza, S.W.
Washington, D.C. 20024

Dear Mr. Kearney:

This is in response to your letter of March 3, 1971, concerning the preemption of State vehicle safety standards under section 103(d) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392(d). We apologize for the oversight that resulted in not answering the letter until this date.

You asked whether State laws requiring that vehicles having two red tail lamps, mounted on the same level and as widely spaced laterally as practicable, are preempted by Motor Vehicle Safety Standard No. 108. In our opinion the answer is no. Standard 108 has many detailed requirements that go beyond those described. Among them, however, are requirements that are substantively identical to your example, though not stated in precisely the same words. We do not interpret section 103(d), which prohibits a State standard "which is not identical to the Federal standard," as requiring the State requirement to be a verbatim copy of its Federal counterpart; substantive identity of requirements is sufficient. Also, we do not interpret the statute as requiring the State to adopt all the Federal requirements on a given aspect of performance. It is sufficient that there be a Federal requirement that is substantively identical to the State requirement in question.

You also asked about two other requirements, as to which the answer may depend on a more detailed examination of their purposes and the circumstances under which they are enacted. One was the requirement that the light from the tail lamps be visible from a distance of 1,000 feet to the rear; the other was that a vehicle have "at least one tail lamp."

The guiding principle that we would apply to this situation is that State requirements that regulate the design of motor vehicles must be identical to the Federal standards, with the qualifications stated above. It was clearly the intent of Congress to provide for uniformity of regulation of the manufacturers in areas where the Federal agency has acted, and they did so by the identity requirement of section 103(d). By contrast, State requirements concerning the condition or adjustment of vehicles generally do not affect the requirements placed on manufacturers, and therefore do not fall within the section 103(d) identity provisions.

Applying this principle to your question, if the visibility requirement is construed by the State, and reasonably appears, to be basically a quantitatively stated requirement that the tail lamps be in good working order and not overly degraded by conditions encountered in use, we would consider the requirement not to be preempted by section 103(d). Similarly, if the one tail lamp requirement is essentially a statement of required minimum working condition (as it appears to be on its face), it would not be preempted.

The issue you mentioned concerning the preemption of State laws applicable to vehicles in use was dealt with in detail in Mr. Toms' letter to you of December 21, 1970. As stated in that letter, our position is that the preemption question does not turn on whether the State law applies to pre-sale or on-the-road vehicles, and we feel that this position was upheld by the clear and compelling implication of the Super Lite cases. In light of the interpretations set forth in this letter, however, we do not believe that the problems of State law and enforcement that you felt may arise will be realized.

Sincerely,

/s/

Lawrence S. Schneider
Chief Counsel

COMMENTS

1. State laws requiring safety equipment should periodically be updated to perform their full highway safety potential and to avoid conflicts with federal standards applicable to newer vehicles.

2. State laws requiring seat belts should be applicable whenever motor vehicles are operated on highways because that is when the equipment is needed, and not only when the vehicle is sold, registered or inspected.

3. Most state seat belt laws should be amended to require lap belts in rear seating positions in passenger cars and shoulder belts in front seating positions based on comparable provisions in the Uniform Vehicle Code.

4. States without laws requiring seat belts should adopt section 12-412 of the Uniform Vehicle Code.

5. The Uniform Vehicle Code and state laws should be amended to require belts in trucks and buses for use by drivers and, perhaps, by certain other passengers.

6. As of December 31, 1963, twenty-three states had laws requiring seat belts in certain cars. As of December 31, 1971, thirty-four states and the District of Columbia have such laws and most of them require belts in cars made before January 1, 1968, the date after which new cars had to have them under federal regulations.

7. Highway safety objectives do not require literal identity between federal and state equipment requirements primarily because they are designed to apply to different persons and at different times and places.

8. Though their requirements should not conflict with a Federal Motor Vehicle Safety Standard, states should be allowed and perhaps even encouraged to adopt and enforce laws or administrative regulations that are in substantial agreement with federal standards. In addition, state laws that do not prevent compliance with a federal equipment requirement should not be invalidated.

9. The failure of state legislatures to keep their laws apace with changes in technology and highway safety requirements (such as those evidenced in federal motor vehicle safety standards) raises a fundamental issue as to whether state laws specifying equipment requirements are desirable.

SUMMARY

1. Thirty-five states have laws requiring the installation of seat belts in certain motor vehicles. These laws generally require belts in the front seat of passenger cars made after a date specified in the law.

2. Thirty-five states, including most but not all of the states described in the first paragraph, impose legal standards and specifications for seat belt equipment.

3. Five states have laws requiring persons in some vehicles to wear available seat belts. These requirements generally apply to the drivers of school buses.

4. Compulsory seat belt use laws applicable to all drivers and passengers, with certain exceptions, have been adopted in New Zealand and by all states in Australia.

5. Failure to wear a seat belt generally is not the cause of an accident although such failure may aggravate injuries. Thus, failing to wear a seat belt is not considered contributory negligence and would not bar recovery by the injured non-wearer. However, there is some precedent suggesting that such failure to wear a belt is relevant to the question of damages.

6. The failure of a driver to wear a seat belt may be a factor causing an accident under certain circumstances, and in an appropriate case such a failure might be considered to be actionable negligence or such contributory negligence as would bar recovery.

7. Depending upon the scope of the preemptive effect of the federal act, all existing state seat belt laws may be null and void as applied to vehicles made since January 1, 1968, because none of the existing state laws is "identical" to the federal standard. The only exception would be state laws relating to seat belts for drivers. Because such laws can prevent crashes and injuries to other persons, they regulate a different

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aspect of performance of the motor vehicle than the federal standard which is directed at preventing injury to the belted or restrained person.

CITATIONS TO STATE LAWS

Ala. Code tit. 36, § 46(4) (Supp. 1969).
13 Alaska Adm. Code § 04.270 (1971).
Ark. Stat. Ann. § 75-733 (Supp. 1971).
Cal. Vehicle Code §§ 27302, 27304, 27305, 27314 (1959, Supp. 1971).
Conn. Gen. Stat. Ann. § 14-100a (1970).
Ga. Code Ann. § 68-1801 (1967).
Ill. Ann. Stat. ch. 95 1/2, § 12-127 (1971).
Ind. Ann. Stat. §§ 47-2241, -2242, -2243 (1965).
Iowa Code Ann. § 321.445 (1966).
Kan. Stat. Ann. § 8-5,135 (Supp. 1971).
Ky. Rev. Stat. Ann. § 189.125 (1970).
Me. Rev. Stat. Ann. tit. 29, § 1368-A (Supp. 1970).
Md. Ann. Code art. 66 1/2, §§ 12-412, -412.1 (1970).
Mass. Ann. Laws ch. 90, §§ 7, 7B (1967, Supp. 1971).
Mich. Stat. Ann. §§ 9.2410(1), -(2) (1968).
Minn. Stat. Ann. §§ 169.685, 169.44(5) (Supp. 1972).
Miss. Code Ann. § 8254.5 (Supp. 1971).
Mo. Ann. Stat. § 307.165 (1972).
Mont. Rev. Codes Ann. § 32-21-150.1, -150.2, -150.3 (Supp. 1971).
Neb. Rev. Stat. § 39-7, 123.05 (1968).
Nev. Rev. Stat. § 484.641 (1971).
N.J. Stat. Ann. § 39:3-76.2 (Supp. 1972).
N.M. Stat. Ann. §§ 64-20-75, -76 (1972).
N.Y. Veh. & Traf. Law § 383 (1970).
N.C. Gen. Stat. §§ 20-135.1, -135.2, -135.3 (1965).
N.D. Cent. Code § 39-21-41.1 (Supp. 1971).
Ohio Rev. Code Ann. § 4513.262 (1965).
Okla. Stat. Ann. tit. 47, §§ 12-413, -414, -415 (Supp. 1970).
Ore. Rev. Stat. §§ 483.482, -484, -486, -488 (1971).
Pa. Stat. Ann. tit. 75, § 75-843 (1971).
R.I. Gen. Laws Ann. §§ 31-23-39, -40, -41 (1968).
S.D. Compiled Laws Ann. §§ 32-15-14, -15, -16 (1967).
Tenn. Code Ann. § 59-930 (1968).
Tex. Rev. Civ. Stat. art. 6701d § 139E (Supp. 1972).
Utah Code Ann. § 41-6-148.10 (1970).
Vt. Stat. Ann. tit. 23, § 4(29) (Supp. 1972).
Va. Code Ann. §§ 46.1-309.1, -310 (1972).
Wash. Rev. Code Ann. § 46.37.510 (1970).
W. Va. Code Ann. § 17C-15-43 (1966).
Wis. Stat. Ann. § 347.48 (Supp. 1971).
17 D.C. Regulations § 151.2, as amended by C.O. No. 69-424, D.C. Register, August 25, 1969.

FOOTNOTES

1/ This Commentary was prepared by the Staff of the National Committee on Uniform Traffic Laws and Ordinances, 1776 Massachusetts Avenue, N.W., Washington, D.C., under contract with the National Highway Traffic Safety Administration. Research for this Commentary was performed by Margaret M. McMahon, a recent graduate of the George Washington University Law School, Washington, D.C., and Steven Rosen, a student at Georgetown University Law School, Washington, D.C. It updates and expands a Commentary on the same subject that was published in 1963. See Traffic Laws Commentary 63-2 entitled "Seat Belt Legislation" which was reprinted in 1 Traffic Laws Annual 601-25 (1964).

2/ State laws current as of December 31, 1971, are included in this Commentary. These laws are compared with UVC § 12-412 (1968, Supp. I 1972), which provides as follows:

> **§ 12-412—Seat belts and shoulder harnesses**
>
> (a) Every passenger car manufactured or assembled after January 1, 1965, shall be equipped with at least two lap-type safety belt assemblies for use in the front seating positions.
>
> (b) Every passenger car manufactured or assembled after January 1, 1968, shall be equipped with a lap-type safety belt assembly for each permanent passenger seating position. This requirement shall not apply to police vehicles.
>
> (c) Every passenger car manufactured or assembled after January 1, 1968, shall be equipped with at least two shoulder harness-type safety belt assemblies for use in the front seating positions.
>
> (d) The commissioner shall except specified types of motor vehicles or seating positions within any motor vehicle from the requirements imposed by subsections (a) to (c) when compliance would be impractical.
>
> (e) No person shall distribute, have for sale, offer for sale or sell any safety belt or shoulder harness for use in motor vehicles unless it meets current minimum standards and specifications (approved by the commissioner) (of the United States Department of Transportation).

3/ UVC §§ 12-412(a), (c) (1968). See footnote 2, supra for the full text of this provision.

4/ UVC § 12-412(b) (1968). See footnote 2, supra.

5/ UVC § 12-412(e) (Supp. I 1972). See footnote 2, supra.

6/ UVC §§ 12-412(b), (d) (1968). See footnote 2, supra. Seat belts are not required in the rear seats of police cars because their misuse by prisoners was feared.

7/ 32 Fed. Reg. 2415 (Feb. 3, 1967). The Standard was promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration (then the National Highway Safety Bureau) under authority of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1381 (1970).

8/ The Standard applies only to passenger cars and does not apply to auxiliary seats, side-facing or rear-facing seats.

9/ FMVSS No. 208 refers to a pelvic restraint and upper torso restraint rather than to lap and shoulder belts. The Standard also refers to a "seat position which includes the windshield header within the head impact area" rather than to a front seat. Throughout this Commentary attempts have been made to substitute such technical phrases with more commonly known terms even though they may be less precise.

10/ 35 Fed. Reg. 15222 (Sept. 30, 1970) and 36 Fed. Reg. 9869 (May 29, 1971).

11/ 36 Fed. Reg. 4600 (March 10, 1971), as subsequently amended by 36 Fed. Reg. 12858 (July 8, 1971); 36 Fed. Reg. 19254 (Oct. 1, 1971); and 37 Fed. Reg. 3911 (Feb. 24, 1972).

12/ A visible and audible signal is required if either front outboard passenger fails to extend his lap belt to a specified length. Lap belts must have emergency locking or automatic locking retractors at all outboard positions; shoulder belts must have either manual adjustment or emergency locking retractors.

13/ This equipment requirement appears in 49 CFR § 393.93 (1972) and the use requirement in 49 CFR § 392.16 (1972).

14/ UVC §§ 12-412(a)-(c) (1968). See footnote 2, supra, for the text of these subsections. Of course, police vehicles are exempted from certain requirements in subsection (b), and the commissioner of motor vehicles may exempt any other vehicles where compliance would be impractical. UVC § 12-412(d) (1968). A footnote to this Code section suggests that the commissioner exempt any passenger cars exempted under existing or future federal regulations requiring seat belts in vehicles. See footnote 17 on page 210 of the Uniform Vehicle Code (1968).

15/ UVC § 1-142 (1968).

16/ UVC § 12-101(c) (1968). Many states have provisions generally exempting farm and road machinery from their equipment laws. Likewise, motorcycles and motor-driven cycles are frequently exempted from general motor vehicle equipment requirements, and are subject to special equipment requirements. See UVC § 12-101(d) (1968). Thus all such vehicles may be exempted from seat belt requirements even though the seat belt law contains no express exemption. This Commentary proceeds on the assumption that states do not require seat belts on motorcycles, motor-driven cycles, road machinery and farm implements. Specific exemptions within the seat belt laws will be noted, where found, but an exemption will be assumed for these vehicles even in the absence of such a specific provision.

Of course as to farm tractors equipped with roll bars, it may be desirable to require lap belts.

17/ UVC § 12-412(d) (1968). See footnote 2, supra, for the text of this subsection.

18/ The Alaska law applies to all motor vehicles except buses, school buses, motorcycles, trucks and motor scooters.

19/ California applies its law to used passenger vehicles except motorcycles. Sales restrictions do not apply to sales to automobile dealers or dismantlers or to junk dealers. California also has specific requirements for seat belts in driver training vehicles and fire fighting vehicles. See footnote 87, infra.

20/ Connecticut and Kansas laws apply to passenger motor vehicles. The Oklahoma law applies to passenger vehicles.

21/ The Georgia law applies to private passenger automobiles.

22/ The Illinois law applies to a "motor vehicle of the first division," a defined term which refers to motor vehicles designed to carry not more than 10 persons.

23/ The laws of these 12 states (Indiana, Maine, Mississippi, Montana, New Jersey, New Mexico, North Dakota, Rhode Island, Tennessee, Washington, West Virginia and Wisconsin) all apply to "automobiles." The Rhode Island law also contains requirements for buses, trackless trolleys and authorized emergency vehicles.

24/ The Iowa law applies to cars, pickups and school buses, except commercial vehicles registered with the commerce commission.

25/ The Maryland law applies to all motor vehicles except motorcycles, buses, trucks and taxicabs.

26/ The Massachusetts law applies to every motor vehicle which is privately owned and operated, designed for the carriage of passengers, and used primarily for pleasure or for pleasure and business, including such vehicles when furnished for hire by a car rental agency but excluding vehicles used for public or commercial purposes.

27/ The Michigan law applies to private passenger vehicles and excepts trucks, buses, hearses, motorcycles and motor-driven cycles.

28/ The Minnesota law applies to all motor vehicles except buses, school buses, motorcycles, farm tractors, road tractors and trucks. A separate law in Minnesota imposes seat belt requirements for the driver's seat in school buses.

29/ The Missouri law applies to four-wheeled passenger motor vehicles except motorbuses.

30/ The Nebraska law applies to all motor vehicles except trucks, buses and taxicabs.

31/ The laws of Nevada and Ohio apply to passenger cars. The Nevada law, like the UVC, contains an exemption relative to the rear seat in police vehicles.

32/ The New York law generally applies to all motor vehicles. New York also has a provision specifically applicable to vehicles used to transport children to or from any public or private school, when such vehicle is owned or leased by the school or operated under a contract with the school, i.e., a school bus.

33/ The North Carolina law applies to passenger vehicles with a capacity for nine or less passengers except motorcycles. Vehicles with seating capacity for less than two passengers are exempted from some requirements. Oregon (see footnote 34, infra) has a somewhat similar exemption.

34/ The Oregon law applies to motor vehicles that are primarily designed for transportation of individuals and that have a seating capacity for one or more passengers side-by-side with the driver except buses.

35/ The Texas law applies to motor vehicles which were originally equipped by the manufacturer with seat belt anchorages. In light of the requirements of FMVSS No. 208 (see the discussion in the text, supra, under the subheading Federal Regulations) the Texas law effectively applies to passenger cars, multipurpose passenger vehicles, trucks and buses, and to any other vehicle originally equipped with anchorages. The Texas law only applies to motor vehicles which are required by Texas Civ. Stat. Art. 6701d (XV) to be inspected. Under that law, some farm vehicles, antique motor vehicles (1935 or earlier), and motor vehicles in transit are exempted from inspection requirements.

36/ The Vermont law applies to "pleasure cars," a defined term which includes all motor vehicles except trucks, buses, taxicabs, motorcycles, motorized highway building equipment and motor vehicles propelled other than by gasoline.

37/ Part of the Virginia law applies to passenger motor vehicles while another part of the law applies only to private passenger motor vehicles.

38/ Part of the District of Columbia law applies to private passenger motor vehicles except motorcycles and motor-driven cycles, while another part of the law applies to the same vehicles plus taxicabs or vehicles used for rental or sightseeing purposes except buses.

39/ The Vermont law (see footnote 36, supra) actually refers to a "jitney," a defined term which appears to be coterminous with the term taxicab.

40/ Other Virginia requirements apply to "passenger vehicles," without the modifier "private," and thus clearly to taxicabs. See footnote 37, supra.

41/ As to the Texas law, see footnote 35, supra.

42/ Under Illinois law, non-complying vehicles may not be operated on the highways. Another section provides that as to 1965 and subsequent model years, non-complying vehicles may not be sold in the state. For further discussion of the incidence

of this and other seat belt requirements, see the discussion in the text under the subheading, When Devices are Required.

43/ The Oregon law applies to all new passenger vehicles after November 1, 1964, according to 1 Traffic Laws Annual 607, 622 (1964).

44/ Another provision in the Ohio law requires anchorage units for attaching two front seat safety belts in all passenger cars manufactured after January 1, 1962, but does not actually require seat belts in such vehicles. The seat belt requirement applies only to passenger cars manufactured after January 1, 1966.

45/ The Kansas law applies to new passenger vehicles sold after October 1, 1966, rather than to vehicles manufactured after that date.

46/ The Minnesota law applies to new school buses purchased after July 1, 1969, rather than to vehicles manufactured after that date.

47/ As to the Texas law, see footnote 35, supra.

48/ The New York law exempts sales at wholesale or for junk.

49/ The New York law does not use the term "school bus," but refers to "a motor vehicle used for the purpose of transporting children to and from public or private schools" when "owned or leased by school districts and non-public schools" or when "used to perform contracts with such school districts and non-public schools for the purpose of transporting school children for hire."

50/ The North Carolina law, however, does require new passenger motor vehicles manufactured or sold after July 1, 1966, to be equipped with "sufficient anchorage units at the attachment points for attaching at least two sets of seat safety belts for the rear seat."

51/ As noted previously, California also has separate provisions for driver education vehicles and firefighting vehicles, Driver education vehicles are required to have a seat belt for the driver and each passenger. Firefighting vehicles are required to have seat belts for each seat utilized by personnel when the vehicle is being operated.

52/ The form of the UVC provisions is as follows: Every (described class of vehicle) shall be equipped with (described seat belt equipment). See the full text of the Code provisions at footnote 2, supra.

UVC § 12-101(a) (1968) then provides as follows:

> (a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter, or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

53/ Id.

54/ Id.

55/ UVC § 13-102 (1968).

56/ UVC § 13-104 (1968, Supp. I 1972). A footnote to the Code provision suggests what kinds of equipment should be designated by the commissioner for inspection:

> [3] It is recommended that the commissioner specify the items of equipment to be inspected that will be appropriate for different types or categories of vehicles. For most motor vehicles, these items should include at least the brakes, lights, reflectors, steering, glazing, mirrors, exhaust systems, windshield wipers, tires and vehicle emission control systems. The items specified for all types of vehicles should also reflect equipment required under state laws comparable to chapter 12 of the Code, equipment required on vehicles made after January 1, 1968 under the National Traffic and Motor Vehicle Safety Act, and equipment recommended for inspection under the Highway Safety Act.

Footnote 3 on page 59 of the 1972 Supplement I for the Uniform Vehicle Code.

57/ This is true in spite of the fact that Code provisions refer to "Every passenger car manufactured or assembled after" (date). The language merely defines the class of vehicles to which the requirement applies. The Code provisions are not directed at manufacturers but at drivers and owners. See UVC § 12-101(a) quoted in footnote 2, supra.

58/ The substance of FMVSS No. 208 is briefly reviewed in the Introduction, under the subheading, Federal Regulations, supra.

59/ 15 USC § 1397(a)(1) (1970) provides as follows:

> No person shall -- (1) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this subchapter unless it is in conformity with such standard except as provided in subsection (b) of this section;

15 USC § 1397(b) (1970), in relevant part, provides as follows:

> (1) Paragraph (1) of subsection (a) of this section shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any motor vehicle or motor vehicle equipment after the first purchase of it in good faith for purposes other than resale.

60/ Virtually all ambiguities concern the question of whether language employed in the state laws is used to designate an enforcement point or merely to help define the class of vehicles which must comply with the requirement. For example, language such as "all vehicles registered must be equipped with seat belts" or "all vehicles sold after a specified date must be equipped with seat belts," would appear to have a different effect than "all vehicles must have seat belts in order to be registered" or "after a specified date no vehicle shall be sold unless equipped with seat belts." In the latter two examples seat belts are made a condition of registration and sale respectively. Whereas in the former two examples, the fact of registration or sale after a specified date merely defines the class of vehicles to which the seat belt requirement applies. It is not always clear which meaning was intended by the legislatures, however, and the interpretation can have a very substantial impact upon the incidence of the requirement.

61/ In relevant part the Alaska law provides:

> A motor vehicle, other than a bus, school bus, motorcycle, motor scooter or truck, registered or sold in Alaska and manufactured or assembled after January 1, 1966, shall be equipped with anchorage units and at least two sets of seat safety belts for the front seat of the vehicle.

62/ In relevant part the Iowa law provides:

> Every new or used car, pickup or school bus, 1966 model or newer, sold, offered for sale, or subject to registration in Iowa except commercial vehicles registered with the commerce commission, shall be equipped with at least two sets of safety belts or safety harnesses installed for use in the front seat of such vehicle; however, when a pick-up or school bus has only an operator's seat, such vehicle need be equipped with only one safety belt or safety harness installed for use by the operator thereof. The safety belts or safety harnesses required shall not be removed unless replaced with approved safety belts or safety harnesses as long as the vehicle is subject to registration.

63/ In relevant part the Maryland law provides:

> (a) Every motor vehicle registered in the State and manufactured or assembled after June 1, 1964, shall be equipped with two sets of seat belts on the front seat of the vehicle. Every motor vehicle registered in the State and manufactured or assembled with a rear seat after June 1, 1969, shall be equipped with two sets of seat belts on the rear seat of the vehicle. It shall be unlawful to sell or offer for sale any vehicle in violation of this section.

Maryland law also contains the following relevant provision:

> No person shall wilfully or intentionally remove or alter any safety device or equipment which has been placed upon any motor vehicle,

trailer, semitrailer, or pole trailer in compliance with any law, rule, regulation, or requirement of any officer or agency of the United States or of this state, if it is intended that the vehicle be operated upon the highways of this state, unless such removal or alteration is permitted by rule or regulation promulgated by the Commissioner.

This provision would prohibit the unauthorized removal of any seat belts required on a vehicle when it was originally manufactured by FMVSS No. 208. Similar provisions may have been enacted in other states, but since the provision does not deal directly with seat belts a full survey of comparable state laws is beyond the scope of this Commentary.

64/ In relevant part the Massachusetts law provides:

Every motor vehicle registered in the commonwealth which is privately owned and operated and designed for the carriage of passengers and which is used primarily for pleasure or for pleasure and business, including every such vehicle furnished for hire by a rental car agency but excluding every such vehicle used for public or commercial purposes, shall be equipped with two seat safety belts for the use of occupants of the front seats.

65/ In relevant part the Minnesota law provides:

After January 1, 1964, all new motor vehicles, not exempt from Minnesota license fees, other than a bus, school bus, motorcycle, farm tractor, road tractor, and truck, sold or offered for sale or registered in Minnesota shall be equipped to permit the installation of seat belts in the front seat thereof.

Within 30 days after the registration of such motor vehicle, it shall be equipped with seat belts installed for use in the left front and right front seats thereof.

The separate Minnesota law requiring a seat belt for the driver's seat of certain school buses also imposes a broad continuous requirement:

> New school buses purchased after July 1, 1969 shall be equipped with driver seat belts and seat belt assemblies. . . .

66/ The Texas law provides:

> Every motor vehicle required by Article XV, 6701d, Uniform Act, to be inspected shall be equipped with front seat belts where seat belt anchorages were part of the manufacturer's original equipment on the vehicle.

67/ In relevant part the Virginia law provides:

> Passenger motor vehicles registered in this state and manufactured after January one, nineteen hundred sixty-eight, shall be equipped with lap belts or a combination of lap belts and shoulder straps or harnesses as required to be installed at the time of manufacture by the federal Department of Transportation.

The requirements applicable to vehicles manufactured between the 1963 model year and January 1, 1968, however, provide that non-complying vehicles may not be operated on the highways and are similar to the laws of the eight states discussed in the text above footnote 68, infra.

68/ In relevant part the Illinois law provides:

> No person shall operate any 1961 or later model motor vehicle of the first division that is titled or licensed by the Secretary of State unless the front seat of such motor vehicle is equipped with 2 sets of seat safety belts.

The same seat belt requirement is imposed on the seller of any 1965 or later model year motor vehicle by another subsection:

> No person shall sell any 1965 or later model motor vehicle of the first division unless the front seat of such motor vehicle

is equipped with 2 sets of seat safety belts. Motorcycles are exempted from the provisions of this Section.

69/ The Montana law also is applicable at the time of any sale or lease of the vehicle involving a Montana resident. See similar laws of eight states discussed in the text near footnote 84, infra. The law adds a prohibition against operating a noncomplying vehicle, however. In relevant part the law provides:

> It is unlawful for any person to buy, sell, lease, trade or transfer from or to Montana residents at retail an automobile which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

70/ The Nebraska law adds the additional requirement that the vehicle must have been sold in the State of Nebraska, and adds a specific prohibition which would make the requirement enforceable against a seller of the vehicle. It nevertheless also appears enforceable against an operator. In relevant part, the law provides:

> Every new motor vehicle designated by the manufacturer as 1964 year model or later, except motor trucks, buses, and taxicabs, sold in this state and operated on any highway, road, or street in this state shall be equipped with two front seat safety belts of a type which has been approved by the Department of Motor Vehicles. The purchaser of any such vehicle may designate the make or brand of or furnish such belts to be installed. Any person selling a motor vehicle not in compliance with this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five dollars and not more than one hundred dollars.

71/ In relevant part the Nevada law provides:

> It is unlawful to drive a passenger car manufactured after January 1, 1968, on a highway unless it is equipped with at least two lap-type safety belt assemblies for use in the front seat positions.
>
> It is unlawful to drive a passenger car manufactured after January 1, 1970, on a highway, unless it is equipped with a lap-type safety belt assembly for each permanent passenger-seating position. This requirement shall not apply to the rear seats of vehicles operated by police department or sheriff's office.
>
> It is unlawful to drive a passenger car manufactured after January 1, 1970, unless it is equipped with at least two shoulder-harness-type safety belt assemblies for use in the front seating positions.

72/ The New Jersey law also adds an express prohibition on selling a noncomplying vehicle. In relevant part the law provides:

> No person shall sell or operate any passenger automobile manufactured after July 1, 1966, and registered in this State unless such passenger automobile is equipped with at least 2 sets of seat safety belts for the front seat of the passenger automobile and the anchorage units necessary for their attachment.

73/ The New York law also adds an express prohibition against selling or registering a noncomplying vehicle. In relevant part the law provides:

> No motor vehicle shall be sold or registered in this state and no motor vehicle registered in this state shall be operated in this state unless such vehicle is equipped with safety belts approved by and conforming to standards established by the commissioner as follows:

74/ The Vermont law provides that:

> A motor vehicle, operated on any highway, shall be in good mechanical condition and shall be properly equipped.

The term "properly equipped" is then defined so as to require seat belt equipment in certain vehicles.

75/ The Wisconsin law is also applicable at the time of a sale or lease. See similar laws in eight states discussed in the text near footnote 84, infra. The Wisconsin law adds a prohibition against operating a noncomplying vehicle, however. In relevant part the law provides:

> It is unlawful for any person to buy, sell, lease, trade or transfer from or to Wisconsin residents at retail an automobile, which is manufactured or assembled commencing with the 1962 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

76/ The Connecticut law also proscribes the sale of a noncomplying vehicle. In relevant part the law provides:

> No new passenger motor vehicle shall be sold or registered in this state unless equipped with at least two sets of seat safety belts for the front seat of the motor vehicle, which belts comply with the requirements of subsection (b) of this section.

77/ The Kansas law may (or may not, depending upon interpretation) also proscribe the sale of a noncomplying vehicle. In relevant part the law provides:

> On and after October 1, 1966, every new passenger motor vehicle sold within this state shall be equipped with safety belts installed for use in the left front and right front seats thereof, and no such new motor vehicle shall thereafter be registered unless such vehicle is equipped with the safety belts so required.

78/ The Kentucky law also prohibits the sale of a noncomplying vehicle, but requires only anchorage units. The law provides, in relevant part:

No person shall sell any new passenger vehicle in this state nor shall any person make application for registering a new passenger vehicle in this state unless the front or forward seat or seats having adequate anchors or attachments secured to the floor and/or sides to the rear of the seat or seats to which seat belts may be secured.

79/ The Missouri law also prohibits selling a noncomplying vehicle. In relevant part the law provides:

No four-wheeled passenger motor vehicle other than motorbuses manufactured or assembled after June 30, 1964, and designated as a 1965 or later year model, shall be sold or registered in this state unless it is equipped with at least two sets of seat safety belts for the front seat of the motor vehicle.

80/ In relevant part the North Carolina law provides:

Every new motor vehicle registered in this State and manufactured, assembled, or sold after January 1, 1964, shall, at the time of registration, be equipped with at least two sets of seat safety belts for the front seat of the motor vehicle.

81/ The Rhode Island law is also applicable at the time of any sale or lease of the vehicle involving a Rhode Island resident similar to the laws of the eight states discussed in the text near footnote 84, infra. The law adds a prohibition against registering a noncomplying vehicle, however. In relevant part the law provides:

No new passenger motor vehicle shall be registered unless it is equipped with an approved type of safety seat belt. The registrar shall suspend the registration of any such motor vehicle not so equipped until it is made to conform to the requirements of said section.

A different section also provides:

It is unlawful for any person to buy, sell, lease, trade or transfer from or to Rhode Island residents at retail an automobile, which is manufactured or assembled commencing with the 1964 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seat thereof.

82/ The Washington law also prohibits the sale of a noncomplying vehicle. In relevant part the law provides:

No person shall sell any automobile manufactured or assembled after January 1, 1964 nor shall any owner cause such vehicle to be registered thereafter under the provisions of chapter 46.12 RCW unless such motor car or automobile is equipped with automobile seat belts installed for use on the front seats thereof which are of a type and installed in a manner approved by the state commission on equipment. Where registration is for transfer from an out of state license, applicant shall be informed of this section by issuing agent and have thirty days to comply.

83/ In relevant part the District of Columbia regulation provides as follows:

No motor vehicle manufactured for the model year 1966 or subsequent years, and registered as a private passenger vehicle, except motorcycles or motor driven cycles, shall be approved on inspection under the provisions of Section 17 of Part III of these Regulations, unless its front seating arrangement (bench or bucket type) be equipped with at least two safety belts or safety harnesses of a type approved by the Director.

No motor vehicle manufactured after January 1, 1968 or for subsequent years and registered as a private passenger vehicle, taxicab, or for livery or sightseeing purposes, except motorcycles, motor driven cycles, or buses, shall be approved on inspection under the provisions of Section 17 of Part III of these Regulations, unless safety belts or safety harnesses of a type approved by the Director are installed in each seat position with

the exception of jump seat or seats. As used in this subsection, the term "jump seat" means a seat intended for the accommodation of one person, and designed to be folded forward into a recess in the vehicle.

84/ The Ohio law would not be enforceable against a buyer. In relevant part the law provides:

> No person shall sell, lease, or rent any passenger car, as defined in division (E) of section 4501.01 of the Revised Code, registered or to be registered in this state and which is manufactured or assembled on or after January 1, 1966, unless such passenger car has installed in the front seat thereof at least two seat safety belt assemblies.

The requirement for anchorage units in certain vehicles also proscribes operation of a noncomplying vehicle:

> No person shall sell, lease, rent, or operate any passenger car, as defined in division (E) of section 4501.01 of the Revised Code, registered or to be registered in this state and which is manufactured or assembled on or after January 1, 1962, unless such passenger car is equipped with sufficient anchorage units at the attachment points for attaching at least two sets of seat safety belts to the front seat thereof.

85/ The Oklahoma law would not be enforceable against a buyer. In relevant part the law provides:

> It shall be unlawful for any person to sell or offer for sale at retail or trade or transfer from or to Oklahoma residents any passenger vehicle which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts or safety shoulder harness combinations which are installed for the use of persons in the left front and right front seats thereof.

86/ In relevant part the Michigan law provides as follows:

> No private passenger vehicle manufactured after January 1, 1965 shall be offered for sale in this state unless the vehicle is equipped with safety belts for the use of the driver and 1 other front seat passenger.

87/ In relevant part the California law provides:

> No dealer shall sell or offer for sale any used passenger vehicle that was manufactured on or after January 1, 1962, other than a motorcycle, unless it is equipped with at least two seatbelts which are installed for the use of persons in the front seat of the vehicle.
>
> No dealer shall sell or offer for sale any used passenger vehicle manufactured on or after January 1, 1968, other than a motorcycle, unless it is equipped with seatbelts for each seating position.

The California law applies only to the sale of used vehicles, recognizing that the sale of new vehicles is covered by FMVSS No. 208. This approach avoids any possible conflict between state law and the FMVSS. The effect of such conflicts is discussed under the heading "Federal Preemption," infra.

The California law also includes the following provision to alleviate an obvious problem with any laws which apply at the time of a sale:

> The requirements of this section shall not apply to sales to dealers, automobile dismantlers, or junk dealers.

Unlike the law quoted above, the California laws requiring seat belts in driver training vehicles and firefighting vehicles are not tied to a point of sale. These laws simply provide that the described vehicles shall be equipped with seat belts. In relevant part the section dealing with driver training vehicles provides:

> All vehicles owned and utilized in driver training by a driver training school. . .or in a course in automobile driver training in any secondary school. . .shall be equipped with a seatbelt for the driver and each passenger.

The section dealing with firefighting vehicles provides, in relevant part, as follows:

> All publicly owned firefighting vehicles designed for and used in responding to emergency fire calls and in combating fires shall be equipped with seatbelts for each seat utilized by personnel when such vehicles are being operated.

88/ The Georgia law, in relevant part, provides:

> On and after January 1, 1964, no new private passenger automobile shall be sold to the general public in this State unless said automobile shall be equipped with two sets of safety belts for the front seat thereof. Said safety belts may be installed by the manufacturer prior to delivery to the dealer, or they may be installed by the dealer.

The Georgia law may apply only to the first sale of a new car. This would be true if the reference to "new passenger automobile" in the law above means new at the time of the sale. If, on the other hand, that phrase merely means new after the effective date of the act (January 1, 1964) then the phrase merely helps to describe a class of vehicles to which that requirement applies. If a vehicle falls within the described class then the requirement would apply to that vehicle whenever it is sold, including sales subsequent to the first sale.

89/ In relevant part the Oregon law provides:

> No person shall sell or offer for sale a new motor vehicle that is primarily designed for transportation of individuals and that has seating for one or more passengers side-by-side with the operator or chauffeur if the vehicle is not equipped, for the operator or chauffeur and for at least one such passenger, with safety belts or safety harnesses, or one of each, complying with minimum standards and specifications

adopted by the division and installed in compliance with regulations adopted by the division.

See also, Ore. Rev. Stat. § 483.495, which bans the sale or use of any vehicle that does not comply with all applicable Federal Motor Vehicle Safety Standards that have been adopted by the Division of Motor Vehicles. Other states may have similar general laws.

90/ The West Virginia law also applies to any lease by a dealer. In relevant part the law provides:

> No dealer in new or used automobiles shall sell, lease, transfer or trade, at retail, any passenger automobile which is manufactured after January one, one thousand nine hundred sixty-five, unless such vehicle is equipped with safety seat belts for the front seat, which seat belts shall meet the standards set and approved by the Society of Automotive Engineers, Inc.

91/ All of these sales prohibitions are noted in footnotes concerning the respective states. With respect to each state, see the indicated footnote, supra. Connecticut, 76; Illinois, 68; Kansas, 77; Kentucky, 78; Maryland, 63; Missouri 79; Montana, 69; Nebraska, 70; New Jersey, 72; New York 73; Rhode Island, 81; Washington, 82; Wisconsin, 75.

92/ As noted previously, Kentucky requires only anchorage units and does not require seat belts.

93/ The laws of Montana, Rhode Island and Wisconsin, like the eight state laws discussed in the text near footnote 84, supra, all provide that it is illegal to buy, sell, lease, trade or transfer from or to a resident of the state at retail any non-complying automobile.

94/ UVC § 12-412(e) (Supp. I 1972). See footnote 2, supra, for the text of this subsection.

95/ Id.

96/ These five states (Alabama, Arkansas, Pennsylvania, South Dakota and Utah) do not require seat belts in any vehicles.

97/ These nine states (Alabama, Indiana, Mississippi, Montana, New Mexico, Oklahoma, Rhode Island, Tennessee and Wisconsin) all provide, however, that the department shall accept as approved any belts meeting standards and specifications of the Society of Automotive Engineers.

98/ These five states (New Jersey, North Dakota, Utah, Virginia and Washington) provide some guidelines for the administrative specifications. New Jersey directs its administrators to be guided by Society of Automotive Engineers (SAE) specifications. North Dakota requires conformance as far as possible with SAE specifications. Utah and Washington provide that the specifications should not be less than the SAE specifications. Virginia provides that the specifications may be the same as specifications promulgated by the Civil Aeronautics Administration, the SAE, or the United States Department of Transportation.

99/ The District of Columbia requires both that the seat belt be of a type approved by the director of motor vehicles and that all belts and anchorages must meet or exceed SAE standards.

100/ The Maryland law requires that belts conform with either administrative specifications or SAE specifications. The Michigan law requires belts to comply with both administrative and SAE specifications.

101/ For other references to SAE standards see the preceeding four footnotes.

102/ See the text near footnotes 47 to 50, supra.

103/ The Bureau of Motor Carrier Safety Regulations provide, in relevant part:

> A motor vehicle which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself with the seat belt assembly.

49 CFR § 392.16 (1972).

104/ Provisions of the Bureau of Motor Carrier Safety Regulations discussed in this Commentary are applicable to common carriers, contract carriers and private carriers subject to the Department of Transportation Act (49 U.S.C. § 1651) at all times except when

such vehicles and drivers operate wholly within a municipality or the commercial zone of a municipality and do not transport such quantities of explosives or other dangerous articles as to require placarding or special marking. See 49 CFR § 390.33 (1972).

105/ See footnote 13, supra.

106/ The Brooklyn, Ohio, ordinance provides:

> Any person operating a motor vehicle equipped with seat safety belts or a passenger in a motor vehicle so equipped must have said seat safety belt buckled or fastened across his person while driving or a passenger in said vehicle within the City of Brooklyn.

The first violation is punishable by an oral reprimand. Second or third violations within a year carry maximum fines of $2.00 and $5.00 respectively.

107/ New Zealand Transport Amendment Act No. 2, § 7 (November 27, 1971).

108/ The New Zealand Embassy, Washington, D.C., in a letter dated April 24, 1972, indicated that on April 17, 1972, the New Zealand Minister of Transport announced that the wearing of seat belts will be compulsory, effective June 1, 1972, in cars, vans and light trucks required by law to be equipped with seat belts.

109/ South Australia Road Traffic Act Amendment Act, 1971, (November 11, 1971); Victoria Motor Car Safety Act (December 22, 1970); New South Wales Regulations for Motor Traffic Amendment (September 15, 1971), Government Gazette No. 108 (October 1, 1971); Queensland Traffic Regulations Amendement (November 25, 1971), Government Gazette, pages 1477-8 (November 27, 1971); Tasmanian Statutory Rules No. 203 (1971); Western Australia Road Traffic Code Amendment (December 10, 1971), Government Gazette, page 5228 (December 16, 1971); Australian Capital Territory Motor Traffic Ordinance No. 4 (December 16, 1971); Northern Territory Traffic Ordinance No. 3 (September 27, 1971).

110/ All but three (Queensland, Tasmania and Northern Territory) of the Australian laws contain definitions of the term "seat belt" or "safety belt" similar to the provision from this New South Wales law:

> "Seat Belt" means a belt or similar device that is fitted to a motor vehicle and designed to restrain or limit the movement of a person who is seated in the vehicle and wearing the belt or device, if the vehicle suddenly accelerates or decelerates.

Two of the laws (New South Wales and Western Australia) specifically provide, however, that the use requirements do not apply to belts or devices designed solely for restraint of persons under the age of 8 years nor to belts or devices which are damaged or defective and not capable of being worn or of being properly adjusted and securely fastened.

111/ This fact may be shown as a defense to a prosecution for failure to wear the belt. Unlike the other laws, the Australian Capital Territory law does not contain specific exemptions but does enumerate certain conditions which, if established by the defendant, constitute a defense to any prosecution.

112/ The Australian Capital Territory law requires drivers to use belts whenever the vehicle is "being driven forward or has its engine running on a public street." Thus it is somewhat unclear whether use is required by a person driving backward. The law also provides that it shall constitute a defense to a prosecution if the defendant establishes that at the time of the alleged offense the vehicle "was stationary and about to be driven backwards or was stationary immediately after having been driven backwards." It would appear that the law was intended to exempt drivers from use requirements while driving backward, and while stationary immediately before and after such a maneuver.

113/ Existing Highway Safety Program Standards are codified at 23 CFR Part 204 (1971). These Standards are promulgated under authority of the Highway Safety Act of 1966, 23 U.S.C. § 402 (1970). The revisions to the standards proposed by the National Highway Traffic Safety Administration are in Notice of Proposed Rule Making, 37 Fed. Reg. 15602 (August 3, 1972).

114/ Notice of Proposed Rule Making § 242.5(c), 37 Fed. Reg. 15608 (August 3, 1972).

115/ Notice of Proposed Rule Making, Traffic Laws and Regulations, 37 Fed. Reg. 15606 (August 3, 1972).

116/ RESTATEMENT (SECOND) OF TORTS § 283; W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 32 (3rd. ed. 1964).

117/ RESTATEMENT (SECOND) OF TORTS §§ 285(a) and 286; W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 35 (3rd. ed. 1964).

118/ See the discussion following footnote 102 in the text, supra.

119/ Laws in these five states are discussed immediately preceeding footnote 102 in the text, supra.

120/ The Iowa law provides in relevant part as follows:

> The fact of use, or nonuse, of seat belts by a person shall not be admissible or material as evidence in civil actions brought for damages.

Note that under this law (and the Minnesota law) evidence of use of the belts is also declared inadmissible.

121/ The Maine law provides in relevant part as follows:

> In any accident involving an automobile, the nonuse of seat belts by the driver of or passengers in the automobile shall not be admissible in evidence in any trial, civil or criminal, arising out of such accident.

Note that the law applies only to the nonuse of seat belts in an "automobile."

122/ The Minnesota law provides in relevant part as follows:

> Proof of the use or failure to use seat belts, or proof of the installation or failure of installation of seat belts 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.

Note that this law (like the Iowa law) also makes inadmissible evidence of use of seatbelts. The Minnesota law also covers installation or failure of installation of seat belts.

123/ The Tennessee law provides in relevant part as follows:

> Provided that in no event shall failure to wear seat belts be considered as contributory negligence, nor shall such failure to wear said seat belt be considered in mitigation of damages on the trial of any civil action.

124/ The Virginia law provides in relevant part as follows:

> (b) Failure to use such safety lap belts or a combination of lap belts and shoulder straps or harnesses after installation shall not be deemed to be negligence.

A failure to wear seat belts under this law, although not negligence, might be considered in mitigation of damages.

125/ See footnote 123, supra. Of course the laws of Iowa, Maine and Minnesota would have the same effect since they preclude admission of the evidence.

126/ As to Virginia see footnote 124, supra.

127/ Britton v. Doehring, 286 Ala. 498, 242 So.2d 666 (1970); Clark v. State, 28 Conn. Supp. 398, 264 A.2d 366 (Conn. Super. Ct. 1970); Remington v. Arndt, 28 Conn. Supp. 289, 259 A.2d 145 (Conn. Super. Ct. 1969); Lipscomb v. Damiani, 226 A.2d 914 (Del. Super. 1967); Brown v. Kendrick, 192 So.2d 49 (Fla. App. 1966); Hampton v. State Highway Comm., 498 P.2d 236 (Kansas 1972); Cierpisz v. Singleton, 230 A.2d 629 (Maryland 1967); Romankewiz v. Black, 16 Mich. App. 119, 167 N.W.2d 606 (1969); Barry v. Coca Cola Co., 99 N.J. Super. 270, 239 A.2d 273 (1967); Miller v. Miller, 273 N.C. 228, 160 S.E.2d 65 (1968); Robinson v. Lewis, 254 Ore. 52, 457 P.2d 483 (1969); Quinius v. Estrada, 448 S.W.2d 552 (Tex. Civ. App. 1969); 61 Corpus Juris Secundum, Motor Vehicles §§ 462, 486(3) (1970).

In other cases courts have ruled that the use of seat belts is not relevant evidence of due care, Deaver v. Hickox, 256 N.E.2d 866 (Ill. App. 1970), nor is a failure to use seat belts relevant evidence of lack of due care, Miller v. Haynes, 454 S.W.2d 293 (Mo. App. 1970).

128/ See, in particular, Cierpisz v. Singleton, 230 A.2d 629 (Md. 1967); and Miller v. Miller, 273 N.C. 228, 160 S.E.2d 65 (1968).

129/ See, in particular, Britton v. Doehring, 286 Ala. 498, 242 So.2d 666 (1970); Lipscomb v. Diamiani, 226 A.2d 914 (Del. Super. 1967); Brown v. Kendrick, 192 So.2d 49 (Fla. App. 1966); and Romankewiz v. Black, 16 Mich. App. 119, 167 N.W.2d 606 (1969).

130/ See, in particular, Britton v. Doehring, 286 Ala. 498, 242 So.2d 666 (1970); and Barry v. Coca Cola Co., 99 N.J. Super. 270, 239 A.2d 273 (1967).

131/ See, in particular, Hampton v. State Highway Comm., 498 P.2d 236 (Kansas 1972); and Romankewiz v. Black, 16 Mich. App. 119, 167 N.W.2d 606 (1969).

132/ See, in particular, Hampton v. State Highway Comm., 498 P.2d (Kansas 1972).

133/ See, in particular, Romankewiz v. Black, 16 Mich. App. 119, 167 N.W.2d 606 (1969); and Miller v. Miller, 273 N.C. 228, 160 S.E.2d 65 (1968).

134/ 448 S.W.2d 552 (Tex. Civ. App. 1969).

135/ For further discussion of the accident prevention potential of seat belts, see footnote 158, infra, and the related text.

136/ See, in particular, Remington v. Arndt, 28 Conn. Supp. 289, 259 A.2d 145 (Conn. Super. Ct. 1969).

137/ Mount v. McClellan, 91 Ill. App.2d 1, 234 N.E.2d 329 (1968); Bentzler v. Braun, 34 Wis.2d 362, 149 N.W.2d 626 (1967).

138/ Mays v. Dealers Transit, Inc. 441 F.2d 1344 (7th Cir. 1971) (wearing of seat belts is sufficiently involved in the matter of exercise of reasonable care as to be an issue of common law negligence under proper circumstances); Truman v. Vargas, 80 Cal. Rptr. 373 (Cal. App. 1969) (it was a question of fact whether in the exercise of ordinary care a seat belt should have been used); Sams v. Sams, 247 S.C. 467, 148 S.E.2d 154 (1966) (allegation of contributory negligence based on failure to use seat belts should not have been stricken from pleadings);

Sonnier v. Ramsey, 424 S.W.2d 684 (Tex. Civ. App. 1968) (court specifically reserved for future decision whether there is a duty to use belts, but upheld a jury decision that reasonably prudent person in plaintiff's position in this case would have used belt).

139/ Noth v. Scheurer, 285 F. Supp. 81 (E.D.N.Y. 1968); Remington v. Arndt, 29 Conn. Supp. 289, 259 A.2d 145 (Conn. Super. Ct. 1969); Brown v. Kendrick, 192 So.2d 49 (Fla. App. 1966); Kavanagh v. Butorac, 221 N.E.2d 824 (Ind. App. 1967); Lawrence v. Westchester Fire Ins. Co., 213 So.2d 784 (La. App. 1968); Myles v. Lee, 209 So.2d 533 (La. App. 1968); Dillon v. Humphreys, 56 Misc.2d 211, 288 N.Y.S.2d 14 (1968); Sonnier v. Ramsey, 424 S.W.2d 684 (Tex. Civ. App. 1968); Bentzler v. Braun, 34 Wis.2d 362, 149 N.W.2d 626 (1967).

140/ Noth v. Scheurer, 285 F. Supp. 81 (E.D.N.Y. 1968); Remington v. Arndt, 28 Conn. Supp. 289, 259 A.2d 145 (Conn. Super. Ct. 1969); Kavanagh v. Butorac, 221 N.E.2d 824 (Ind. App. 1967); Lawrence v. Westchester Fire Ins. Co., 213 So.2d 784 (La. App. 1968).

141/ Mahoney v. Beatman, 110 Conn. 184, 147 A. 762, 66 ALR 1121 (1929) (not a seat belt case); Remington v. Arndt, 28 Conn. Supp. 289, 259 A.2d 145 (Conn. Super. Ct. 1969); Sonnier v. Ramsey, 424 S.W.2d 684 (Tex. Civ. App. 1968). See also, 7 Am. Jur.2d, Automobiles and Highway Traffic § 361 (1963).

142/ Noth v. Scheurer, 285 F.Supp. 81 (E.D.N.Y. 1968); Remington v. Arndt, 28 Conn. Supp. 289, 259 A.2d 145 (Conn. Super Ct. 1969); Sonnier v. Ramsey, 424 S.W.2d 684 (Tex. Civ. App. 1968).

143/ Hale v. Cravens, 129 Ill. App.2d 466, 263 N.E.2d 593 (1970); Schomer v. Madigan, 255 N.E.2d 620 (Ill. App. 1970); Mount v. McClellan, 91 Ill. App.2d 1, 234 N.E.2d 329 (1968).

144/ PROSSER, HANDBOOK OF THE LAW OF TORTS § 64 (3rd ed. 1964).

145/ Id. Prosser suggests that this distinction is not really workable, particularly in cases (such as the seat belt cases) where the plaintiff's conduct prior to his injury, although not contributing to causation of the accident, nevertheless does result in an aggravation of the ensuing damages. He suggests that probably the best view is that damages should be apportioned in such cases, but cases will be infrequent where the extent of aggravation can be accurately determined,

and the courts may properly refuse to reduce damages on the basis of mere speculation. He suggests that the real difference between avoidable consequences and contributory negligence is that in the former the damages are capable of being apportioned while in the latter they are not.

146/ Noth v. Scheurer, 285 F.Supp. 81 (E.D.N.Y. 1968); Remington v. Arndt, 28 Conn. Supp. 289, 259 A.2d 145 (Conn. Super. Ct. 1969); Hale v. Cravens, 129 Ill. App.2d 466, 263 N.E.2d 593 (1970); Schomer v. Madigan, 255 N.E.2d 620 (Ill. App. 1970); Mount v. McClellan, 91 Ill. App.2d 1, 234 N.E.2d 329 (1968); Fontenot v. Fidelity and Cas. Co., 217 So.2d 702 (La. App. 1969); Sonnier v. Ramsey, 424 S.W.2d 684 (Tex. Civ. App. 1968); Tom Brown Drilling Co. v. Nieman, 418 S.W.2d 337 (Tex. Civ. App. 1967).

147/ Hale v. Cravens, 129 Ill. App.2d 466, 263 N.E.2d 593 (1970); Schomer v. Madigan, 255 N.E.2d 620 (Ill. App. 1970); Fontenot v. Fidelity and Cas. Co., 217 So.2d 702 (La. App. 1969); Tom Brown Drilling Co. v. Nieman, 418 S.W.2d 337 (Tex. Civ. App. 1967).

148/ Truman v. Vargas, 80 Cal. Rptr. 373 (Cal. App. 1969).

149/ Glover v. Daniels, 310 F.Supp. 750 (N.D. Miss. 1970); Noth v. Scheurer, 285 F.Supp. 81 (E.D.N.Y. 1968).

150/ Schomer v. Madigan, 255 N.E.2d 620 (Ill. App. 1970).

151/ Britton v. Doehring, 286 Ala. 498, 242 So.2d 666 (1970); Romankewiz v. Black, 16 Mich. App. 119, 167 N.W.2d 606 (1969); Barry v. Coca Cola Co., 99 N.J. Super. 270, 239 A.2d 273 (1967).

152/ This Act was adopted by Congress in 1966, 80 Stat. 718. It can be found in 15 U.S.C. §§ 1381-1426 (1970).

153/ 15 U.S.C. § 1392(d) (1970). This subsection is captioned, in part, "Supremacy of federal standards."

154/ FMVSS No. 208 does not require seat belts in vehicles made after January 1, 1972 if the restraint devices employed can meet specified crash protection criteria.

155/ A letter from Douglas W. Toms, Director of the National Highway Traffic Safety Administration, to Edward F. Kearney, Executive Director of the National Committee on Uniform Traffic Laws and Ordinances, dated December 21, 1970, states in pertinent part:

. . .

It is our opinion that the only reasonable interpretation of section 103(d) is that it applies to any State laws or regulations, whether they apply to new (pre-sale) vehicles or to vehicles on the road. Limiting the section to State laws that only apply before sale to a user would make it virtually nugatory, since a State can enforce its vehicle and equipment requirements against manufacturers just as effectively by "on the road" or inspection requirements as by pre-sale requirements.

. . .

Our conclusion, therefore, is that the preemption provisions of section 103(d) apply to any State laws or regulations that have the effect of regulating the same aspect of performance, and the same vehicles, as one or more Federal standards, regardless of whether the State provision is enforced against new (pre-sale) vehicles or those in use.

. . .

In these paragraphs, "section 103(d)" is 15 U.S.C. § 1392(d) which is quoted in text at footnote 153, supra. It is the federal law banning state standards that do not duplicate federal standards.

Other indications that the National Highway Traffic Safety Administration regards the Act's preemption to be applicable after vehicles have been sold at retail for highway use can be found in that Administration's notices concerning bumpers, 35 Fed. Reg. 17999 (Nov. 24, 1970), and emergency reflective triangles, 35 Fed. Reg. 17350 (Nov. 11, 1970).

156/ Senate Commerce Committee, Senate Report No. 1301 (June 23, 1966), relating to National Traffic and Motor Vehicle Safety Act of 1966. 2 United States Code Cong. & Admin. News 2720 (1966).

157/ Chrysler Corp. v. Toffany, 419 F.2d 499 (2d Cir. 1969); Chrysler Corp. v. Rhodes, 416 F.2d 319 (1st Cir. 1969).

158/ See, for example, the following two accident reports by the National Transportation Safety Board: Highway Accident Report, Schoolbus/Automobile Collision and Fire Near Reston,

Virginia, February 29, 1972, Report Number NTSA-HAR-72-2 (April 12, 1972) (unbelted school bus driver was ejected from seat in collision resulting in a second collision that injured occupants of bus) and Highway Accident Report, Multiple-Vehicle Collisions and Fires, U.S. 101 North of Ventura, California, August 18, 1971, Report Number NTSB-HAR-72-4 (July 6, 1972) (unbelted truck driver was ejected by an explosion following a collision possibly resulting in further collisions and injuries to other persons).

159/ Prior to 1968, the Uniform Vehicle Code required issuing an inspection certificate when "equipment required under the provisions of this Act is in good condition and proper adjustment." UVC § 13-107(b) (Rev. ed. 1962). See also, UVC §§ 13-102, 13-104(c) (Rev. ed. 1962). For a discussion of 1968 revisions in the Code relating to inspection, see Inspection Laws Annotated 16, 22 (1969).

160/ One study has suggested the possibility of a significant rate of failure among belts that are used frequently and that are three to ten years old so that seat belts should be inspected to determine whether they will properly restrain passengers involved in a crash. "Strength of Uses Seatbelts," 55 Technical News Bulletin 198 (National Bureau of Standards, August 1971) cited in "Highway Research Abstracts," Vol. 42, page 13 (Feb., 1972).

161/ Footnote 1 on page 174 of the 1968 edition of the Uniform Vehicle Code.

162/ In fact, the National Committee proceeded on the assumption that Federal Motor Vehicle Safety Standards do not apply to vehicles in use on the highways. See Agenda for National Committee Meeting 235-39 (Oct. 24, 1968).

163/ For instance, the letter in footnote 164, infra, notes that the UVC requires tail lamps to be visible for 1,000 feet while the FMVSS requires tail lamps to comply with an SAE standard. In this instance, the UVC standard is more appropriate for on-highway regulatory needs.

164/ The letter quoted in full in text was in response to the following letter:

March 3, 1971

Mr. Rodolfo Diaz, Associate Director
Motor Vehicle Programs
National Highway Traffic Safety
Administration
5234C Nassif Building
Washington, D.C. 20591

Dear Mr. Diaz:

I appreciated the opportunity to review some potential problems that could arise should state equipment laws be invalidated by the National Traffic and Motor Vehicle Act and Federal Motor Vehicle Safety Standards issued pursuant thereto.

Those problems include a failure to inform drivers and owners exactly what is required in the maintenance and use of their vehicles, an end to on-highway enforcement and to criminal prosecutions for equipment violations, alteration of civil liability and, in many states, a significant undermining of periodic motor vehicle inspection programs.

Though the National Committee is on record as opposing state laws that conflict with a FMVSS (see footnotes 1 and 4 on pages 174-75 of the 1968 Uniform Vehicle Code), that does not mean it holds the Act invalidates such laws. On the contrary, it is my personal belief that the Act's "preemption clause" is not, and should not be, applicable after the vehicle has been sold for use on the highways. Certainly, there is no judicial precedent for such a position.

During our discussion, I used UVC § 12-204 and FMVSS No. 108 as an illustration. The Code requires most motor vehicles to have "at least two tail lamps mounted on the rear, which, when lighted. . .shall emit a red light plainly visible from a distance of 1,000 feet to the rear. . . . On vehicles equipped with more than one tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable." FMVSS

No. 108 requires passenger cars to have "2 red tail lamps in accordance with SAE J 585c." They are to be located "on the rear, 1 on each side of the vertical centerline, at the same level and as far apart as practicable."

As you know, the Act appears to invalidate state laws that are "not identical to the Federal standard" with respect to any motor vehicle or item of equipment. The Code and FMVSS tail lamp provisions do not appear to be "identical." Does that mean a state law patterned after the Code would be invalid? There are more than 20 state laws requiring only one tail lamp. See pages 4-6 in our Traffic Laws Commentary No. 69-2 entitled "Tail Lamp Laws" (July 18, 1969).

Though your assurance that the Act invalidates only state laws that do not conform in substance with a FMVSS would be helpful, I nonetheless think this issue warrants specific consideration prior to the issuance of any FMVSS, particularly those for vehicles in use. Further, I recommend revising the Act to preserve state laws and/or issuing in-use standards under the Highway Safety Act.

Cordially,

/s/

Edward F. Kearney
Executive Director

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