STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 03-048

Liability of Driver to Passengers Not Wearing Safety Belts

QUESTION

Is the driver of a vehicle liable for injuries to adult passengers sustained due to the failure to wear safety belts?

OPINION

Yes, there are circumstances in which the driver of a vehicle would be liable to his adult passengers for injuries incurred due to the failure to wear safety belts.

ANALYSIS

Tenn. Code Ann. § 55-9-604 prohibits the admission of evidence of nonuse of safety belts in civil actions except in product liability actions.

This prohibition has been in effect since 1963.[1] In *McKinney v. Jarvis*, 2000 WL 279902 (Tenn. Ct. App. 2000) the Court of Appeals explicitly found that Tenn. Code Ann. § 55-9-604 is not violative of due process:

> The mandatory use of automobile seatbelts is a question of state interest. Even if the states were indifferent to it, the interest has been thrust upon them by the United States Congress. Congress declared that it was in the public interest for the states to adopt mandatory seat belt use laws. (49 U.S.C.A. § 30127(d)). In 1994 Congress enacted a system of rewards and punishments for compliance/noncompliance. 23 U.S.C.A. §153(a)(2) and (h). Tennessee enacted its own mandatory seat belt law in 1986. [footnote omitted] *See* 1986 Tenn. Pub. Acts 866 (now codified in Tenn Code Ann § 55-9-603, 604, amended by 1994 Tenn. Pub. Acts 661).
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> Prior to the legislative mandate, however, a majority of the states rejected the seat belt defense, meaning that they did not

[1] Chap. 102 of the Pub. Acts of 1963; Chap. 114 of the Public Acts of 1977; Chap. 866 of the Public Acts of 1986; Chap 661 of the Public Acts of 1994.

> recognize a common-law duty to buckle up. *Amend v. Bell*, 570 P.2d 138 (Wash. 1977). Among the reasons the *Amend* court cited why the state might wish to exclude evidence of the failure to use a seat belt were (1) the defendant should not be able to diminish the consequences of his negligence by the plaintiff's failure to anticipate the defendant's part in causing the accident itself; and (2) allowing the seat belt defense would lead to a veritable battle of experts as to what injuries would have or have not been avoided had the plaintiff been wearing a seat belt. In *Fischer v. Moore*, 517 P.2d 458 (Colo. 1973), the court said that a tortfeasor must accept the plaintiff as he finds him, and that he may not rely upon the injured party's failure to utilize a voluntary protective device to escape all or a portion of the damages which the plaintiff incurred as a consequence of the defendant's negligence.
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> We think these are legitimate interests for the state to deal with. Everyone may not agree with the choice made by the legislature, but the choice does have a rational connection to the legitimate state interests.

McKinney, 2000 WL 279902 * 2-3.

Consequently, if an accident is the fault of the driver,[2] the driver may be found liable to his adult passengers for injuries incurred in the accident despite the passengers' failure to wear safety belts.

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[2]Examples would include drifting off the roadway through inattention and hitting a tree, turning left from the right hand lane, or running a red light.

Requested by:

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