



## Georgia Paves the Way for Wider Approval of Seat Belt Non-Usage Evidence in Civil Lawsuits

by Lee Mickus and Sierra Epke

On April 21, 2025, Georgia Gov. Brian Kemp signed SB 68 into law.<sup>1</sup> One immediate effect of that legislation is the repeal of Georgia’s gag rule that, since 1988, has prevented jurors from learning that a crash-involved claimant did not wear an available seat belt. With this legislative change, Georgia aligns its treatment of seat belt non-usage in the courts with the state’s numerous policies that encourage motorists to recognize the safety value of buckling up. Georgia joins several other States that have recently adopted legislation to reverse antiquated and illogical statutes that prohibited personal injury defendants from introducing evidence that an injured plaintiff was not belted at the time of the subject crash.

### Georgia Policies Have Long Encouraged Seat Belt Use

Georgia understands that seat belts provide enormous safety benefits to motorists who consistently buckle up. The Governor’s Office of Highway Safety observes that the “safety benefits of restraint use are significant and well-documented.”<sup>2</sup> This position is backed up by the National Highway Traffic Safety Administration’s analysis, which found that “[t]he simple act of buckling a seat belt can improve an occupant’s chance of surviving a potentially fatal crash by from 44 to 73 percent . . . They are also highly effective against serious nonfatal injuries.”<sup>3</sup> Georgia’s internal data from 2022 showed that unrestrained drivers and passengers amount to only about 12% of Georgia motorists but a disproportionate 53% of fatalities—meaning that unbelted occupants “are more than seven times more likely to be fatally injured compared to restrained occupants.”<sup>4</sup> The carnage that has resulted from people choosing not to use seat belts is breathtaking: “If all passengers had been restrained [between 2018 – 2022], a total of 3,285 lives would have been saved[.]”<sup>5</sup>

Acting on these findings, Georgia has adopted a range of policies to encourage Georgia residents to think about seat belt usage whenever they enter a vehicle. For example, the Georgia Department of Public Health’s Injury Prevention Program promotes the use of seat belts as the most

<sup>1</sup> See *Gov. Kemp Signs Historic Legislation Delivering Commonsense, Meaningful Tort Reform*, Office of the Governor, Press Release, Apr. 21, 2025, <https://gov.georgia.gov/press-releases/2025-04-21/gov-kemp-signs-historic-legislation-delivering-commonsense-meaningful>.

<sup>2</sup> *Georgia Traffic Safety Facts–2022 Data: Occupant Protection*, Governor’s Office of Highway Safety, July 2024, at 10.

<sup>3</sup> Lawrence Blincoe, et al., *The Economic and Societal Impact of Motor Vehicle Crashes*, Nat’l Highway Traffic Safety Admin., (Revised May 2015), at 193.

<sup>4</sup> *Georgia Traffic Safety Facts–2022 Data: Occupant Protection*, *supra* n. 1, at 1, 3.

<sup>5</sup> *Id.* at 10.

effective way to save lives and reduce injuries in crashes.<sup>6</sup> The Governor’s Office of Highway Safety provides funding for media campaigns as well as hands-on programs such as the Rollover Simulator and Seatbelt Convincer in order “to demonstrate the importance of wearing a seat belt every trip every time and the consequences of failing to buckle up.”<sup>7</sup>

In addition to spending millions of dollars annually to promote the understanding that seat belts save lives, Georgia also employs the force of law to cause motorists to buckle up. For almost three decades Georgia has required front seat occupants and all passengers under eighteen to buckle up, and Georgia has empowered its peace officers to enforce the seat belt mandate as a primary offense since 1996.<sup>8</sup> Enforcement programs, including the Click It or Ticket campaign and high visibility nighttime seat belt enforcement projects, ensure that the public knows seat belt usage is required.<sup>9</sup> In 2023, Georgia law enforcement officers issued 62,342 seat belt citations.<sup>10</sup>

Georgia’s policies have shaped motorists’ behavior. Whether they do so because of the legal requirement or because of campaigns that call attention to seat belts’ life-saving ability, an overwhelming majority of Georgians choose to buckle up when they ride in passenger vehicles. The most recent statistics show that more than 87% of Georgians wear their seat belts, and the percentage of users has been at or above this level for more than a decade.<sup>11</sup>

### **SB 68 Adopts a Common-Sense Approach that Allows Georgia Jurors to Consider Seat Belt Non-Usage Evidence**

The co-existence of the gag rule barring evidence that a plaintiff failed to wear a seat belt alongside Georgia’s primary-enforcement mandatory use law presented an inconsistent policy.<sup>12</sup> The Texas Supreme Court rightly described a similar statutory scheme as a “contradictory legal system” because it “punished seat-belt nonuse with criminal citations while allowing plaintiffs in civil lawsuits to benefit from juries’ ignorance of their misconduct.”<sup>13</sup> The blanket exclusion of evidence that a motorist had chosen not to make use of available occupant protection equipment was also constitutionally dubious, particularly when the civil lawsuit involved a product liability claim that the motorist’s vehicle was insufficiently crashworthy.<sup>14</sup> SB 68 resolves those incongruities.

SB 68 completely reverses direction and replaces the provision that had entirely excluded seat belt non-usage evidence with new statutory language that explicitly allows defendants in all types of civil actions to introduce evidence that a motor vehicle occupant failed to buckle up. Jurors may consider this evidence for all liability and damages issues on which it may bear: negligence,

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<sup>6</sup> Georgia Department of Public Health, *My Seat Belt Saved My Life*, Georgia Department of Public Health Blog (Dec. 13, 2013).

<sup>7</sup> *2023 Annual Report*, Governor’s Office of Highway Safety, Jan. 26, 2024, at 3, 68, 73.

<sup>8</sup> O.C.G.A. § 40-8-76.

<sup>9</sup> *2023 Annual Report*, *supra* n.6, at 68, 73.

<sup>10</sup> *Id.* at 109.

<sup>11</sup> *Id.* at 129.

<sup>12</sup> Compare O.C.G.A. § 40-8-76.1(b) (requiring each front seat occupant of a motor vehicle to wear a seat belt) with O.C.G.A. § 40-8-76.1(d) (the failure of a motor vehicle occupant to use a seat belt shall not be considered on any question of liability in a civil action).

<sup>13</sup> *Nabors Well Servs., Ltd. v. Romero*, 456 S.W.3d 553, 565 (Tex. 2015).

<sup>14</sup> See Lee Mickus, *Georgia Supreme Court’s Doubts on Seat Belt Gag Rule’s Constitutionality Puts Legislature on Notice*, Washington Legal Foundation Legal Opinion Letter, July 29, 2022 (discussing *Domingue v. Ford Motor Co.*, 875 S.E.2d 720 (Ga. 2022) and *DiMaso v. Ford Motor Co.*, No. 99A-6172-6, 2003 WL 25432010 (Ga. Cobb Cty. Dist. Ct. July 1, 2003)).

comparative negligence, apportionment of fault, assumption of risk, injury causation, “or for any other purpose.”<sup>15</sup>

Under SB 68, admission of non-usage evidence does not require the defendant to establish that the unbelted vehicle occupant violated Georgia’s seat belt mandatory use law. In other words, there need not have been a citation from law enforcement or a court adjudication of “the failure of an occupant of a motor vehicle to wear a seat safety belt” in order for the evidence to be admitted.<sup>16</sup> Sufficient foundation for asserting that a motor vehicle occupant was not belted can instead be established by evidence such as witness observations at the crash scene, a data report downloaded from the crashed vehicle’s Event Data Recorder, or expert conclusions drawn from the physical evidence.

A late amendment to SB 68 added language confirming that the trial judge retains the discretion to balance admission of seat belt non-usage evidence against other concerns. This clarification was not necessary, as the ever-present “rules of evidence include everything necessary to handle the admissibility of seat-belt evidence.”<sup>17</sup> Nonetheless, the statute explicitly authorizes trial judges to exclude non-usage evidence based on findings of unfair prejudice under O.G.C.A. § 24-4-403 or pursuant to “any other statutory or common law rule of evidence.”<sup>18</sup> In light of this reference to common law rules of admissibility, it is significant that before the gag rule statute became effective on September 1, 1988, Georgia courts concluded that “evidence of failure to use a seat belt was admissible on the question of damages if there was evidence that the injuries could have been reduced by the use of a seat belt[.]”<sup>19</sup> Thus, Georgia’s common law will not support arguments that seat belt non-usage evidence should be entirely excluded.

In addition to the pre-gag rule decisions, the widespread acceptance of seat belt use provides a strong basis for overcoming any objection that non-usage evidence is unfairly prejudicial. In 1987, the year before Georgia’s mandatory use law was adopted, the national seat belt use rate was only 42%—less than half the current percentage.<sup>20</sup> Since then, attitudes toward wearing seat belts have evolved dramatically. As the Arizona Court of Appeals observed, people are now “educated from a young age about the importance of ‘buckling up’ and using seatbelts while driving vehicles.”<sup>21</sup> Any debate over the effectiveness of seat belts at reducing injuries and saving lives “has long ended.”<sup>22</sup> The nearly universal acceptance of seat belts as critical safety equipment signals a societal expectation of use. Far from being unfairly prejudicial and prone to misuse by jurors, evidence that claimants failed to wear seat belts is a critical component of present-day factfinders’ calculus when considering whether those motorists acted unreasonably and exacerbated their own injuries.

The seat belt provision of SB 68 became effective immediately upon Governor Kemp’s approval and applies to lawsuits that are already pending and awaiting trial.<sup>23</sup> As a statute addressing

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<sup>15</sup> O.C.G.A. § 40-8-76.1(d)(1).

<sup>16</sup> *Id.*

<sup>17</sup> *Nabors Well*, 456 S.W.3d at 563.

<sup>18</sup> O.C.G.A. § 40-8-76.1(d)(1).

<sup>19</sup> *Payne v. Joyner*, 399 S.E.2d 83, 84 (Ga. Ct. App.1990).

<sup>20</sup> Nat’l Highway Traffic Safety Admin., *Achieving a High Seat Belt Use Rate: A Guide for Selective Traffic Enforcement Programs*, Apr. 1, 2001, at 1; Nat’l Highway Traffic Safety Admin., *Traffic Safety Facts: Seat Belt Use in 2023 – Use Rates in the States and Territories*, Aug. 1, 2024, at 1 (“The nationwide seat belt use rate was 91.9 percent in 2023”).

<sup>21</sup> *Brethauer v. General Motors Corp.*, 211 P.3d 1176,1183-84 (Ariz. Ct. App. 2009).

<sup>22</sup> *Nabors Well*, 456 S.W.3d at 565.

<sup>23</sup> S.B. 68, § 9, Reg. Sess. (Ga. 2025) (“This Act shall become effective upon its approval by the Governor . . . [and, with

evidence, courts should begin allowing defendants to introduce non-usage evidence in trials right away.

## Georgia Joins a Growing Chorus of States Allowing Juries to Consider Non-Usage Evidence

Georgia is only the most recent State to change its gag rule and allow juries to hear and act on evidence that a plaintiff failed to buckle up. Indiana revised its statute in 2024 to allow non-usage evidence in civil lawsuits involving most vehicle occupants.<sup>24</sup> West Virginia acted in 2021 to permit jury consideration of non-use evidence in determining injury causation and, in product liability crashworthiness cases, for comparative negligence.<sup>25</sup> And Louisiana in 2020 completely repealed its exclusionary statute, opening the door for introduction of facts showing that a plaintiff failed to wear an available seat belt.<sup>26</sup>

The legislative action in Georgia and these other States draws into question why other jurisdictions maintain their statutes that bar or severely limit the use of seat belt non-usage evidence. For example, Alabama, Kansas, and Montana all currently prohibit juries from learning that a plaintiff failed to buckle up.<sup>27</sup> Tennessee only allows this evidence to be heard in product liability lawsuits and completely excludes it in all other types of cases.<sup>28</sup> Nebraska and Oregon restrict the impact of this evidence by capping at a mere five percent the reduction in damages juries may assign due to a plaintiff's failure to wear a seat belt.<sup>29</sup>

Those states adopted such gag rule statutes in the 1980s in the context of the political, technological, and consumer acceptance circumstances that existed at that time.<sup>30</sup> Since then, the public has overwhelmingly accepted seat belts as an effective device to protect occupant, and their use is now a reasonable expectation of motorists. The changed perception of seat belts has rendered the persisting gag rule statutes anachronistic: such a rule “may have been appropriate in its time, but today it is a vestige of a bygone legal system and an oddity in light of modern societal norms.”<sup>31</sup> Policymakers in States that continue to cling to statutes preventing juries from hearing evidence that a plaintiff chose not to fasten a seat belt should reflect on Georgia's action and question the justification for maintaining these statutes.

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the exception of certain inapplicable provisions] shall apply to causes of action pending[.]”).

<sup>24</sup> Ind. Code Ann. § 9-19-10-7(c); § 9-19-11-8.5 (2024).

<sup>25</sup> W. Va. Code Ann. § 17C-15-49a (2021).

<sup>26</sup> La. Stat. Ann. § 32:295.1(E) (2020).

<sup>27</sup> Ala. Code § 32-5B-7 (1991); Kan. Stat. Ann. § 8-2504(c)(2017); Mont. Code Ann. § 61-13-106 (1987).

<sup>28</sup> Tenn. Code Ann. §55-9-604 (1994).

<sup>29</sup> Neb. Rev. Stat. Ann. §60-6,273 (1992); Ore. Rev. Stat. Ann. §31.760 (1989) (inapplicable to product liability lawsuits).

<sup>30</sup> Barry F. Bohan & Stephen P. Teret, *Seat Belts and the Law: Mandatory Use Laws and the Legal Consequences of Non-Use*, Nat'l Highway Traffic Safety Admin., May 1990, at 1-2, 18-20.

<sup>31</sup> *Nabors Well*, 456 S.W.3d at 555.