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SEAT BELT DEFENSE IN ALL 50 STATES

Subrogation professionals must become familiar with an increasingly used defense in the litigation of auto insurance subrogation cases. Even if the insured is totally free from fault in the operation of the insured's auto, not wearing a seat belt could result in a reduction of the damages the insured and/or subrogated auto carrier will be allowed to recover. In some states, through the interplay of the Made Whole Doctrine or other state statutes, this defense could have an affect on a carrier's rights of subrogation or reimbursement. This chart discusses the applicable seat belt defense, if any, in all 50 states.

Every state except **New Hampshire** requires adults to wear seat belts while traveling in a motor vehicle. Lap belts have been mandated on new vehicles since 1968. Rear outboard lap belts have been required since 1989, and shoulder harnesses since 2008. Subrogation professionals, like trial lawyers, must come face to face with an increasingly used defense within the civil justice system. In cases involving auto accidents, even if the plaintiff/insured is totally free from negligence, not wearing a seat belt could result in a reduction of the damages the plaintiff will be allowed to recover. And with increasing frequency, it is being used by liability adjusters as an argument for significantly reducing offers of settlement. Trial lawyers are also using the argument offensively and with some success.

Seat Belt Defense Generally

The seat belt defense has been integrated into the comparative fault system of many states to distribute equitably the costs of first and second collision injuries on the basis of their respective causes. "First collision" injuries, of course, are the injuries resulting directly from an insured being rear-ended by a tortfeasor. "Second collision" injuries are those injuries which result inside the plaintiff's vehicle which would not have occurred had the insured been properly wearing his or her seat belt. With a growing number of state mandatory seat belt use laws, we will see a proliferation of the seat belt defense in the coming years.

Thirty (30) states currently have no seat belt defense in place: **Alabama**, **Arkansas**, **Connecticut**, **Delaware**, **Idaho**, **Illinois**, **Indiana**, **Kansas**, **Kentucky**, **Louisiana**, **Maine**, **Maryland**, **Massachusetts**, **Minnesota**, **Montana**, **Nebraska**, **New Hampshire**, **New Mexico**, **North Carolina**, **Oklahoma**, **Pennsylvania**, **Rhode Island**, **South Carolina**, **Tennessee**, **Texas**, **Utah**, **Vermont**, **Virginia**, **Washington**, and **Wyoming.** Twenty six (26) of these states actually have laws prohibiting evidence of non-use of a seat belt - all except **Idaho**, **Indiana**, and **Tennessee**. In most of these states, comparative fault or contributory negligence laws are in places that allow the jury to compare the negligence of a plaintiff as compared to a defendant. However, for example, in **Maryland**, state law requires that occupants of motor vehicles wear seat belts. Md. Code Transportation § 22-412.3. Nonetheless, Maryland does not consider failure to use a seat belt as contributory negligence. The accident, they feel, was caused by the negligence of the driver's operation of the motor vehicle – NOT the failure of the plaintiff to wear a seat belt.

On the other hand, fifteen (15) states do have some mechanism in place which could result in reduction of plaintiff's damages for not having a seat belt on at the time of an accident: **Alaska**, **Arizona**, **California**, **Colorado**, **Florida**, **Georgia**, **Iowa**, **Michigan**, **Missouri**, **New Jersey**, **New York**, **Ohio**, **Oregon**, **West Virginia**, and **Wisconsin.**

These states rationalize that while the accident itself may have been caused by the driver's negligence, the actual injury for which damages are sought is often exacerbated the "second collision" which occurs within the plaintiff's vehicle as a result of his/her not wearing a seatbelt.

These 15 states have adopted the seat belt defense, some by common law with no statutory approval, some by case decision, and some specifically by statute. These states have provisions for allowing the introduction of evidence that the plaintiff was not wearing a seat belt in order to affect the allocation of fault by the jury or have a more structured statutory scheme that assesses fault or limits the percentage of fault that can be attributed to the failure to wear a seat belt. Clearly, a driver not wearing a seat belt and injured when his car is rear-ended by an inattentive driver can't conceivably be 100% at fault for his injuries, but that could be the result in some states.

Two (2) states, **Hawaii** and **North Dakota**, do not have a specific statute addressing the seat belt defense, but have considered it and indicated they might move toward one. The North Dakota Supreme Court, for example, has indicated that it would probably be inclined to accept the seat belt defense. *Halvorson v. Voeller*, 336 N.W.2d 118 (N.D. 1983).

Three (3) states, **Indiana**, **Mississippi**, and **Nevada**, do not have fully developed seat belt defense laws, because no statute or case specifically prohibits application of the seat belt defense based on a comparative negligence or failure to mitigate damages theory. *State v. Ingram*, 427 N.E.2d 444 (Ind. 1981); *Rhinebarger v. Mummert*, 362 N.E.2d 184 (Ind. Ct. App. 1977); M.C.A. § 63-2-3 (1997); *Roberts v. Grafe Auto Co., Inc.*, 701 So.2d 1093 (Miss. 1997).

There are a number of ways the seat belt defense comes into play – depending on the state. Usually, it arises under a "comparative negligence" or a "failure to mitigate damages" theory. **Florida** is an example of the former. F.S.A. § 316.614(9) (West 1997); N.Y. Vehicle and Traffic Law § 1229-c(8) (McKinney 1997). **New York** is an example of the latter. *Spier v. Barker,* 323 N.E.2d 164 (N.Y. 1974). In New York, as in most states which allow it, the seat belt defense can be submitted to the jury only if the defendant can demonstrate, by competent evidence, a causal connection between the plaintiff's non-use of an available seat belt and the injuries and damages sustained. In **Oregon**, if there is evidence from which the jury might conclude that the plaintiff's injuries were exclusively or primarily the result of his/her failure to wear a safety belt, the jury can find that such failure to do so is not reasonable under the circumstances. Little guidance beyond this is given. *Dahl v. BMW*, 748 P.2d 77 (Or. 1987).

The seat belt defense is controversial and is not always fair. To ameliorate its potential harshness, some jurisdictions affirmatively limit the percentage of fault which can be attributed to an otherwise-blameless driver who wasn't wearing a seat belt. In **Missouri**, only one (1%) percent can be attributed to the person who failed to use a seat belt. Mo. Rev. Stat. § 307.178(4). In **Iowa**, **Michigan**, and **Oregon**, the maximum percentage is five (5%) percent. I.C.A. § 321.445(4) (West 1997); Mich. Comp. Laws Ann. § 257.710(e)(6) (West 1997); O.R.S. § 18.590 (1996). But, perhaps the state with the most-litigated and most clearly defined seat belt laws is **Wisconsin**, where the percentage is a statutory fifteen (15%) percent. Wis. Stat. § 347.48(2m)(g) provides as follows:

> *(g) Evidence of compliance or failure to comply with par. (b), (c), or (d) is admissible in any civil action for personal injuries or property damage resulting from the use or operation of a motor vehicle. Notwithstanding s. 895.045, with respect to injuries or damages determined to have been caused by a failure to comply with par. (b), (c), or (d), such a failure shall not reduce the recovery for those injuries or damages by more than 15%. This paragraph does not affect the determination of causal negligence in the action. The fact that jurisdictions have dealt with the seat belt defense in such varying ways is testament to the defense's controversial nature. This paper will outline some of the ways to combat the questionable and damage-reducing seat belt defense. Part I of the paper will discuss how to legally combat the defense in jurisdictions where the law may still not be completely settled on the issue. Part II will discuss how to factually combat the seat belt defense in jurisdictions where it does exist.*

In **California**, juries are allowed to hear evidence of seat belt non-use to prove comparative fault. California Vehicle Code § 27315(i), provides that *"In a civil action, a violation of [the seat belt use law] does not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as fact without regard to the violation.*" Although a violation of the California seat belt statute does not "constitute negligence as a matter of law or negligence per se," the statute does not "totally ban use of the seatbelt statute as a factor in determining negligence." *Housley v. Godinez*, 4 Cal. App.4th 737, 746 (1992). In California, for

purposes of determining comparative fault, not only may the jury learn of a plaintiff's failure to use his or her seat belt, the jury may also decide what weight, if any, to give the seat belt use statute in determining the plaintiff's standard of reasonable care.

The applicability of a seat belt defense is not completely settled in many jurisdictions including **Hawaii, Indiana, Mississippi, Nevada**, and **North Dakota**. Some states seemingly cannot make up their mind on the issue. In **Kentucky**, § 189.125(5) overruled *Wemyss v. Coleman*, 729 S.W.2d 174 (Ky. 1987) so that now Kentucky does not employ the seat belt defense. In **Ohio**, § 4513.263(f) overruled *Vogel v. Wells*, 566 N.E.2d 154 (Ohio 1991) so that now Ohio does not allow for application of the seat belt defense. Furthermore, the following states have adopted the seat belt defense, but only by common law with no statutory approval: **Alaska, Arizona, Georgia**, and **New Jersey**. If you are practicing in a jurisdiction where seat belt defense law is not completely settled, or where it is settled only by common law, the following arguments may help you avoid a damaging seat belt subrogation reduction:

(1) Use of a seat belt is not technically the proximate cause of the accident in question and can't be considered comparative negligence because your insured's failure to wear his or her seat belt did not help to actually cause the accident itself in any way. The traditional application of comparative negligence is that it applies only when the plaintiff's misconduct is the "but for" cause the accident, not the "but for" cause of the damages. Failing to wear a seat belt may have made the plaintiff's injuries worse, but it certainly did not help to cause the accident itself. Stress that the failure to wear a seat belt cannot logically be considered comparative negligence.

(2) Use of a seat belt does not have a bearing on the doctrine of mitigation of damages. The traditional mitigation of damages rule states that a plaintiff has a duty to mitigate his or her damages *after* an accident has already occurred. Obviously, it would do a plaintiff no good to secure his or her seat belt after a car accident. Thus, failure to wear a seat belt cannot accurately be described as a plaintiff's failure to mitigate damages either.

(3) The seat belt defense runs counter to the traditional tort doctrine that defendants take their plaintiffs as they find them, also known as the "egg-shell" plaintiff's doctrine. The plaintiff would not be assessed a percentage of fault if he or she had exceptionally brittle bones that allowed fractures to occur from a minor impact – why should it be any different with the "seat-beltless" condition of the insured in which the defendant found the insured?

(4) The insured should not have to anticipate other peoples' negligence.

(5) A jury will have trouble speculating about what kind of damages to award a plaintiff if the seat belt defense is allowed and speculation should not play a role in causation. In other words, if the seat belt defense is asserted, juries will essentially have to guess what damages a plaintiff would have sustained with seat belt use as compared to what they actually sustained. Even with the help of experts, this kind of calculation could become nothing more than mere guesswork.

Subrogation and the Seat Belt Defense

The seat belt defense can be used to thwart legitimate subrogation interests in a number of ways. Obviously, a defense attorney or third-party liability adjuster can claim he or she is entitled to a significant reduction in your subrogation damages due to the failure to use a seat belt. They can also claim that they were not made whole due to the defense's application.

If you are subrogating in one of the 15 states that allow seat belt evidence to reduce a plaintiff's damages, it is important to know whether the insured was actually wearing a seat belt. It should be one of the first questions you ask. It is also relevant what kind of seat belt was being worn. To minimize the effect of the seat belt defense, consider the following:

(1) Contrary to the assertion that government tests verify the efficacy and injury-reducing benefits of wearing a seat belt, those tests are generally flawed and cannot universally be applied to everybody. Many of those tests are performed using anatomical dummies which represent only 50% of the population and are generally only valid as to 5'7", 165-pound males. Also, note that the government tests are performed with the seat belts snugly secured around the dummies'

waists so as to get the maximum benefit out of the belts. Since the average person does not use a seat belt in this way, the tests cannot be representative of how seat belt use would have affected the average person, including your client, who wears his or her seat belt less formally. There is no seat belt defense if the insured was wearing a seat belt, but wearing it loosely.

(2) If the insured is shorter, he or she may sit closer than the average person to the steering wheel. A shorter plaintiff, *even if they wore a seat belt*, might have sustained damages that an "average" person would not have sustained. Also consider that if the insured is physically heavier than normal, even if they wore a seat belt, it may have pushed the seat belt system past its maximum limits thereby making it less effective, or even ineffective.

(3) If the insured was wearing a seat belt, but suffered injuries consistent with not wearing a seat belt, consider the possibility of a seat belt defect. Some seat belts have a "Window Shade Device" which can make seat belts less effective. In some cases, even if a seat belt was worn, the aftermath of an accident may appear as though no seat belt was used. The "Window Shade Device" allows the wearer of the seat belt to introduce slack into the belt. Slack can occur either intentionally or accidentally by pulling on the belt. If the insured leans forward to adjust the radio, the "Window Shade Device" may introduce slack into the belt that never re-tightens. Slack in a seat belt system reduces the effectiveness of the seat belt.

(4) Quite often, only lap belts are available in the back seats of vehicles. If the insured was only wearing a "lap belt," it is possible that the insured was more severely injured because of the seat belt use. This is often indicated by the existence of internal injuries.

Conclusion

The applicability of the seat belt defense remains a controversial issue among lawyers and lawmakers. This controversy presents opportunities to argue around the application of the doctrine. The very fact that you are familiar with the seat belt defense, its applicability in a particular jurisdiction, and some rather cutting-edge arguments with which to diffuse it, will go a long way in bolstering your negotiating strength and your overall subrogation recovery. With the help of research by Jacob Coz, a Marquette law student and summer legal intern at Matthiesen, Wickert & Lehrer, S.C., let's take a closer look at the specific laws of all 50 states.

STATE	SEAT BELT LAWS	SEAT BELT DEFENSE
ALABAMA	Anyone over the age of 15 in the front seat of a vehicle must use a seat belt. Ala. Code § 32-5B-4 (1975).	Failure to wear a seat belt cannot be considered evidence of contributory negligence and cannot be used to limit the liability of an insurer. Ala. Code § 32-5B-7 (1975). However, in a product liability action, when alleging that a seat belt was improperly designed, the Alabama Supreme Court ruled that evidence the plaintiff was not wearing or was improperly wearing the seat belt was admissible. *General Motors Corp. v. Saint*, 646 So.2d 564 (Ala. 1994).
ALASKA	Anyone over the age of 16 must wear a seatbelt while in a vehicle. Alaska Stat. § 28.05.095.	Failure to wear a seat belt can be used to reduce damages if a reasonably prudent person would have worn a seat belt under the circumstances and if the plaintiff suffered more severe injuries as a result of not wearing a seat belt. *Hutchins v. Schwartz*, 724 P.2d 1194 (Alaska 1986). Additionally, a comparative negligence defense can be raised in a product liability action where evidence exists that plaintiff was improperly using a seat belt. *General Motors Corp. v. Farnsworth*, 965 P.2d 1209 (Alaska 1998).

STATE	SEAT BELT LAWS	SEAT BELT DEFENSE
ARIZONA	Anyone in the front seats of a vehicle must be wearing a seatbelt; and all persons 16 or older are required to wear a seatbelt in every seat of the vehicle. A.R.S. § 28-909.	Under the comparative fault theory, a jury may reduce a plaintiff's damages due to failure to use a seat belt if injured party is of age and discretion that non-use of a seat belt would be considered a fault, non-use was unreasonable under the circumstances, and non-use of the seat belt caused or enhanced the injuries. *Law v. Superior Court In and For Maricopa County*, 755 P.2d 1135 (Ariz. 1988).
ARKANSAS	All drivers and front seat passengers must wear a seatbelt. A.C.A. § 27-37-702.	A.C.A. § 27-37-703, which made evidence of failure to use a seat belt admissible in a civil action was found unconstitutional by the Arkansas Supreme Court in *Mendoza v. WIS International,* 490 S.W.3d 298 (Ark. 2016). The exact implications of this ruling are yet to be determined.
CALIFORNIA	All individuals 16 and older must use a seatbelt. West's Ann. Cal. Vehicle Code § 27315.	Evidence of an individual not wearing a seat belt does not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation of this statute. West's Ann. Cal. Vehicle Code § 27315.
COLORADO	All individuals in the front seat of a vehicle must use a seat belt. C.R.S. § 42-4-237.	Evidence of seat belt non-use is admissible in negligence actions only for non-economic damages. C.R.S. § 42-4-237.
CONNECTICUT	All individuals seven and older must wear a seat belt in the front seat. C.G.S.A. § 14-100a.	Failure to wear a seat belt is not admissible evidence in any civil action. C.G.S.A. § 14-100a.
DELAWARE	All individuals over the age of 16 must wear a seat belt in a vehicle. 21 Del. C. § 4802.	Failure to wear a seat belt is inadmissible as evidence for comparative negligence claims, contributory negligence claims, any civil trial, and any insurance claim adjudication. 21 Del. C. § 4802.
DISTRICT OF COLUMBIA	All individuals in a vehicle must wear a seat belt. D.C. Code § 50-1802.	Any violation of the seat belt laws does not constitute evidence of contributory negligence, negligence, or a basis for civil actions for damages. D.C. Code § 50-1807.
FLORIDA	All drivers must wear a seat belt, all passengers 18 and under must be properly secured by a seat belt or appropriate car seat, and all persons 18 or older in the front seat must have a seat belt. West's F.S.A. § 316.614.	Failure to use a seat belt can be used as evidence of comparative negligence. The plaintiff's failure to use a seat belt should be raised as an affirmative defense of comparative negligence. Failure to wear a seat belt is not negligence per se or *prima facie* evidence of negligence; failure to wear a seat belt is only evidence of comparative negligence and must be weighed among other factors in determining negligence. *Ridley v. Safety Kleen Corp.*, 693 So.2d 934 (Fla. 1996).
GEORGIA	All individuals in the front seat of a vehicle must wear a seat belt. O.C.G.A. § 40-8-76.1	Failure to use a seat belt cannot be considered as evidence of negligence or causation and shall not be used to diminish any recovery for damages. O.C.G.A. § 40-8-76.1.

STATE	SEAT BELT LAWS	SEAT BELT DEFENSE
HAWAII	All individuals in a vehicle must use a seatbelt or appropriate car seat if under the age of eight. Haw. Rev. Stat. § 291-11.6.	Hawaii's mandatory seat belt law states that it "shall not be deemed to change existing laws, rules, or procedures pertaining to a trial of a civil action for damages for personal injuries or death sustained in a motor vehicle accident." Haw. Rev. Stat. § 291-11.6.
IDAHO	All individuals in a vehicle must use a seat belt. Idaho Code § 49-673.	Evidence of a failure to wear a seat belt is admissible in civil actions in Idaho. It is not admissible as evidence of comparative fault, and may only be used for the apportionment of damages. To introduce evidence of a failure to wear a seat belt, a respondent must make a clear and convincing case that failure to wear a seat belt was a contributing cause to the injury or damage suffered. The seat belt defense ***cannot*** be raised in a pleading. Rather, the seat belt defense must instead be submitted in a pre-trial motion to amend the pleadings and a subsequent hearing on the matter. The court can allow the pleadings to be amended if after a review they determine that the moving party has "a reasonable likelihood" of proving facts at trial to support an apportionment of damages based on a failure to wear a seat belt. A seat belt defense is not admissible in a claim related to uninsured or underinsured motorist coverage. The seat belt defense is also inadmissible in actions to recover for or on behalf of a minor who is not old enough to qualify for driver's training, unless the claim is brought by a parent who is suing for wrongful death. Idaho Code § 6-1608.
ILLINOIS	All individuals in a vehicle must wear a seatbelt. Any child under the age of eight must be seated in a way that complies with the Child Passenger Protection Act. 625 I.L.C.S. § 5/12-603.1.	Evidence of a plaintiff's failure to use a seat belt is not admissible with respect to questions of negligence or damages. *Clarkson v. Wright*, 483 N.E.2d 268 (Ill. 1985).
INDIANA	All individuals in a vehicle must be wearing a seat belt. I.C. § 9-19-10-2.	Evidence of a plaintiff not wearing a seat belt is inadmissible in any civil action to mitigate damages or limit the liability of an insurer. *Hopper v. Carey*, 716 N.E.2d 566 (Ind. App. 1999). Evidence may be introduced in a product liability action and the defendant has the burden of proving that the plaintiff was not properly using the seat belt and that proper seat belt usage would have mitigated injuries. I.C. § 9-19-10-7.
IOWA	All individuals in the front seat must wear a seat belt. Any child under 18 must be seated in an appropriate car seat. I.C.A. § 321.445.	Failure to use a seat belt cannot be used as evidence of comparative fault. A plaintiff's winnings can be reduced by up to 5%. Failure to use a seat belt can be admitted to mitigate damages where (1) defendant presents evidence that failure to use a seat belt contributed significantly to the plaintiff's injuries and (2) if the trier of fact finds the failure to use a seat belt did contribute significantly. I.C.A. § 321.445.
KANSAS	All individuals 14 years or older must wear a seat belt. K.S.A. § 8-2503.	Evidence of a failure to use a seat belt is inadmissible under the comparative negligence doctrine on the issue of contributory negligence or mitigation of damages. K.S.A. § 8-2504.

STATE	SEAT BELT LAWS	SEAT BELT DEFENSE
KENTUCKY	All children under the age of seven must have an appropriate car seat. All individuals over the age of eight must wear a seat belt or appropriate car seat. K.R.S. § 189.125.	Failure to use a child booster seat shall not be considered as contributory negligence evidence, and shall not be admissible in any civil action. Failure of any individual to wear a seat belt shall not constitute negligence per se. K.R.S. § 189.125. Furthermore, an individual has no duty to use a seat belt, but juries should be informed of the general duty to exercise ordinary care for one's own safety. It then falls on the jury to decide if the breach of such a duty occurred and if it was a substantial factor that enhanced the injuries plaintiff suffered. *Tetrick v. Frashure*, 119 S.W.3d 89 (Ky. 2003).
LOUISIANA	All individuals over the age of 13 must wear a seat belt. La. R.S. § 32:295.1.	Failure to wear a seat belt is not evidence of comparative negligence. Failure to wear a seat belt cannot be admitted to mitigate damages. La. R.S. § 32:295.1. Evidence of seat belt non-use may be admissible in a product liability action only if: "(1) it has probative value for some purpose other than as evidence of negligence, such as to show that the overall design, or a particular component of the vehicle, was not defective; (2) its probative value is not outweighed by its prejudicial effect or barred by some other rule of evidence; and (3) appropriate limiting instructions are given to the jury, barring the consideration of seat belt non-use as evidence of comparative negligence or to mitigate damages." *Rougeau v. Hyundai Motor America*, 805 So.2d 147 (La. 2002) (evidence of seat belt non-use was barred because the part of the car that malfunctioned was unrelated to the seat belts themselves).
MAINE	All passengers under the age of 18 must be properly secured by either a seat belt or child seat. All individuals over the age of 18 must wear a seat belt. 29 M.R.S.A. § 2081.	Evidence of the non-use of a seat belt is inadmissible in civil trials. 29 M.R.S.A. § 2081.
MARYLAND	All individuals under the age of 16 need to use a seat belt or appropriate child seat. All individuals over the age of 16 needs to use a seat belt. Md. Code Transportation § 22-412.3.	Failure to use a seat belt cannot be used as evidence of negligence, contributory negligence, evidence to limit liability of a tortfeasor or an insurer, and it cannot be used to diminish recovery for damages. Evidence of a failure to use a seat belt is inadmissible in a civil trial for property damage, personal injury, or death. None of the above rules are intended to limit the ability of an individual to bring a product liability action against a manufacturer over a seat belt. Md. Code Transportation § 22-412.3.
MASSACHUSETTS	All children under the age of 12 must use a seat belt or appropriate child seat. All individuals over the age of 12 must wear a seat belt. M.G.L.A. 90 § 13A.	Violation of child seat rules is inadmissible as evidence of contributory negligence in any civil action. M.G.L.A. 90 § 7AA. Evidence of a victim not wearing a seat belt is insufficient to be submitted to a jury, unless the failure to wear a seat belt was causally related to her injuries. *Shahzade v. C.J. Mabardy, Inc.*, 586 N.E.2d 3 (Mass. 1992).
MICHIGAN	Children under the age of 16 must be secured with either a seat belt or child seat. All individuals over the age of 16 must wear a seat belt when in the front seat. M.C.L.A. § 257.710e.	Evidence of a failure to wear a seat belt can be considered evidence of negligence and reduce an award by up to 5%. M.C.L.A § 257.710e(8).

STATE	SEAT BELT LAWS	SEAT BELT DEFENSE
MINNESOTA	All individuals are required to wear a seat belt. Children must use an appropriate car seat. M.S.A. § 169.686	Evidence of seat belt use or non-use is inadmissible in civil actions. Except for product liability actions related to defective seat belts. M.S.A. § 169.685
MISSISSIPPI	All individuals are required to wear a seat belt. Children must use an appropriate car seat. M.C.A. § 63-2-1.	Failure to use a seat belt shall not be considered contributory or comparative negligence. M.C.A. § 63-2-3. Evidence of seat belt use or non-use is still admissible in some cases. *Herring v. Poirrier*, 797 So.2d 797 (Miss. 2000) (defense attorney was allowed to question plaintiff about whether or not he was wearing seat belt to establish whether plaintiff remained in seat during extent of the crash).
MISSOURI	All individuals must use a seat belt. All children under 16 must use an appropriate car seat. Mo. Rev. Stat. § 307.178.	Failure to wear a seat belt cannot be admitted as evidence of comparative negligence. Damages may be reduced by a maximum of 1%. Evidence of seat belt non-use can be admitted to mitigate damages when: (1) defendant has an expert stating that failure to wear seat belt contributed to plaintiff's injuries; and (2) if the trier of fact finds failure to wear a seat belt did contribute. Mo. Rev. Stat. §. 307.178. In a product liability action, proof that the plaintiff was not wearing a seat belt was inadmissible. *Newman v. Ford Motor Co.*, 975 S.W.2d 147 (Mo. 1998).
MONTANA	All individuals must wear a seat belt or use an appropriate car seat. Mont. Code Ann. § 61-13-103.	Evidence of use or non-use of a seat belt is inadmissible in any civil action and use or non-use does not constitute negligence. Mont. Code Ann. § 61-13-106. This does not apply to a product liability action based on design or condition of seat belt. *Stokes v. Montana Thirteenth Judicial Dist. Court*, 259 P.3d 754 (Mont. 2011).
NEBRASKA	All children under the age of 18 must use an appropriate child seat. All individuals over the age of 18 must use a seatbelt when sitting in the front seat. Neb. Rev. Stat. § 60-6,270.	Evidence of an injured party not using a seat belt is not admissible as evidence of liability or proximate cause. It may be admissible as evidence of mitigation of damages. Evidence of not wearing a seat belt may not reduce damages more than 5%. Neb. Rev. Stat. § 60-6,273.
NEVADA	All individuals over the age of 6 must wear a seat belt. All individuals under the age of six must use an appropriate child seat. N.R.S. § 484D.495.	Failure to wear a seat belt may not be considered as negligence or causation in any civil action. N.R.S. § 484D.495. An exception to this exists in product liability actions centered on seat belt design or defect. *Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 252 P.3d 649 (Nev. 2011).
NEW HAMPSHIRE	Individuals are not required to wear seat belts.	Evidence of plaintiff not wearing a seat belt is inadmissible to show comparative negligence. *Thibeault v. Campbell*, 622 A.2d 212 (N.H. 1993).
NEW JERSEY	All individuals younger than the age of eight must use an appropriate car seat. All individuals younger than the age of 18 must use a seat belt. All individuals older than the age of 18 must use a seat belt in the front seats. N.J.S.A. § 39:3-76.2f.	The seat belt defense is a viable theory for personal injuries. *Dunn v. Durso*, 530 A.2d 387 (N.J. Super. Ct. App. Div. 1986). In a product liability action where seat belt was not product in question: (1) non-use of a seat belt was not contributory negligence sufficient to bar recovery in strict liability; and (2) seat belt non-use can be used to reduce a motorist's recovery, but only for those damages avoidable by the use of a seat belt. *Waterson v. General Motors Corp.*, 544 A.2d 357 (N.J. 1988).

STATE	SEAT BELT LAWS	SEAT BELT DEFENSE
NEW MEXICO	All individuals under the age of 18 must use an appropriate car seat. All individuals over the age of 18 must use a seat belt. N.M.S.A. § 66-7-372 (1978).	Evidence of the non-use of seat belts is inadmissible in civil trials. N.M.S.A. § 66-7-373; *Norwest Bank New Mexico, N.A. v. Chrysler Corp.*, 981 P.2d 1215 (N.M. Ct. App. 1999); *Thomas v. Henson*, 695 P.2d 476 (N.M. 1985).
NEW YORK	All individuals under the age of eight must use an appropriate car seat. All individuals under the age of 16 must use a seat belt in all seats. All drivers must use a seat belt. McKinney's Vehicle and Traffic Law § 1229-c.	Seat belt defense is strictly limited to determination of damages, and is unavailable for determining liability. Failure to use a seat belt does not amount to negligence per se or contributory negligence. *Bongianni v. Vlasovetz*, 101 A.D.2d 872 (N.Y. App. Div. 1984).
NORTH CAROLINA	All children under the age of 16 must have an appropriate child seat. All individuals in a vehicle must use a seat belt. N.C.G.S.A. § 20-135.2A.	Evidence of non-use of a seat belt is inadmissible in any civil action. N.C.G.S.A. § 20-135.2A.
NORTH DAKOTA	All children under the age of 17 must use an appropriate car seat. All individuals over the age of 18 must wear a seat belt when in the front seat of a vehicle. 2017 North Dakota Laws H.B. 1323.	Although not relevant for issues of liability, evidence of failure to wear a seat belt can be used to reduce damages. *Duma v. Keena*, 680 N.W.2d 627 (N.D. 2004).
OHIO	All children must use an appropriate child seat. All individuals must use a seat belt in the front seat. Ohio Rev. Code Ann. § 4513.263.	Evidence of failure to use a seat belt may not be used as evidence of negligence or contributory negligence. Such evidence may be admitted to reduce compensatory damages awarded for non-economic losses. Evidence of misuse or non-use of a seat belt is admissible in product liability actions. Ohio Rev. Code Ann. § 4513.263.
OKLAHOMA	All individuals in the front seat of a vehicle must use seat belts. 47 Okla. Stat. Ann. § 12-417.	The use or non-use of seat belts is admissible evidence in any civil proceeding unless the plaintiff is a child under 16 years of age. 47 Okla. Stat. Ann. § 12-420.
OREGON	All individuals in all seats must use a seat belt or a child seat where applicable. O.R.S. § 811.210.	Evidence of an individual not using a seat belt can only be admitted to mitigate the injured party's damages. Non-use of a seat belt cannot mitigate damages more than 5%. These rules do not apply in product liability actions or actions taken against a seller or lessor of product. These rules also do not apply where the non-use of a seat belt "is a substantial contributing cause of the accident itself." O.R.S. § 31.760.
PENNSYLVANIA	All individuals over the age of 18 must use a seat belt in the front seat of a car. All individuals under the age of 17 must use a seat belt or child seat in all seats. 75 P.S. § 4581.	Evidence of a failure to wear a seat belt is inadmissible in any civil action. 75 P.S. § 4581. Evidence that injured party was not wearing a seat belt is inadmissible in product liability actions.
RHODE ISLAND	All individuals over the age of eight must wear a seat belt in all seats. All individuals under the age of eight must use an appropriate child seat. R.I.G.L. § 31-22-22.	Failure to wear a child restraint system, seat belt, or shoulder harness is not admissible as evidence of contributory or comparative negligence in any civil action. R.I.G.L. § 31-22-22.

STATE	SEAT BELT LAWS	SEAT BELT DEFENSE
SOUTH CAROLINA	All occupants in every seat must wear a seat belt. S.C. Stat. Code § 56-5-6520.	Failure to wear a seat belt is not negligence per se and failure to wear a seat belt is not admissible as evidence in a civil action. S.C. Stat. Code § 56-5-6540(C).
SOUTH DAKOTA	All individuals in the front seat of a vehicle must use a seat belt. All individuals under the age of 18 must use a seat belt or child seat in every seat of the vehicle. S.D.C.L. § 32-38-1.	Failure to wear a seat belt does not qualify as contributory negligence, comparative negligence, or assumption of the risk. Failure to wear a seat belt may not be introduced as evidence in any civil action on the issue of injuries or mitigation of damages. S.D.C.L. § 32-38-4.
TENNESSEE	All individuals four years and older must wear a seat belt when in the front seat. T.C.A. § 55-9-603.	Evidence of failure to wear a seat is not admissible in a civil action unless a causal relationship exists between the failure to wear a seat belt and the injury, and a variety of other factors are satisfied. T.C.A. § 55-9-604.
TEXAS	All individuals 15 years old or older must wear a seat belt. All individuals younger than 17 years of age must wear a seat belt or use a child seat. Tex. Transp. Code § 545.413.	Evidence of use or non-use of a seat belt is admissible for the purpose of apportioning responsibility under the proportionate responsibility statute. *Nabors Well Services, Ltd. v. Romero*, 456 S.W.3d 553 (Tex. 2015); Tex. Transp. Code § 545.413.
UTAH	All individuals in all seats must use a seat belt or child seat. U.C.A. § 41-6a-1803 (1953).	Failure to use a seat belt or child restraint is not comparative or contributory negligence. It may also not be introduced into evidence in a civil trial on the issue of negligence, injuries, or the mitigation of damages. U.C.A. § 41-6a-1806 (1953).
VERMONT	All individuals in the vehicle in every seat are required to wear a seat belt. Vt. Stat. Ann. Tit. 23, § 1259.	Evidence of a party not complying with the seat belt laws in Vermont is inadmissible in a civil action. Vt. Stat. Ann. Tit. 23, § 1259.
VIRGINIA	Any individual over 18 years of age is required to wear a seat belt when in the front seat of a vehicle. Va. St. § 46.2-1094.	Failure to wear a seat belt is not admissible as evidence of negligence, mitigation of damages, and no counsel is allowed to comment on the use or non-use of a seat belt at trial. Va. St. § 46.2-1094.
WASHINGTON	All individuals in a vehicle must either wear a seat belt or an appropriate child seat. R.C.W.A. § 46.61.688.	Evidence of non-use of a seat belt is inadmissible in any civil action. R.C.W.A. § 46.61.688(6).
WEST VIRGINIA	All individuals in the front seat must wear a seat belt. Any individual under the age of 18 must wear a seat belt or use a child seat when in the back seats of a vehicle. W. Va. St. § 17C-15-49.	Evidence of not wearing a seat belt is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and is not admissible in mitigation of damages. However, a defendant can motion the court to conduct an in camera hearing to determine if the failure to use a seat belt was the proximate cause of the injuries complained of. If the court determines that it may have been, the judge can give a special interrogatory to the jury, asking the jury if the plaintiff did indeed not wear a seat belt and, if so, was it a failure to mitigate the damages. If yes, the jury may then reduce the plaintiff's damages by up to 5%. W. Va. St. § 17C-15-49(d).

STATE	SEAT BELT LAWS	SEAT BELT DEFENSE
WISCONSIN	The driver and any individual over the age of 8 years old in the front seat or the back seat must use a seat belt. Wis. Stat. § 347.48.	Wisconsin uses the seat belt defense. Awarded recoveries cannot be reduced by more than 15%. Wis. Stat. § 347.48(2m)(g). Failure to use a seat belt is not negligence per se, but if failure to use a seat belt has a causal relationship to the injury suffered, the jury should be instructed as such. If the seat belt is not the cause of an accident, property damage awards cannot be reduced for failure to use a seat belt. *Foley v. City of West Allis*, 335 N.W.2d 824 (Wis. 1983). Claims for contribution may not be made for violations of statutory law related to a driver's failure to properly restrain underage passengers with a seat belt. *Gaertner v. Holcka*, 580 N.W.2d 271 (Wis. 1998).
WYOMING	All drivers and any passenger under 12 years of age must use a seat belt. Wyo. Stat. § 31-5-1402 (1977.	Evidence of any individual's failure to use a seat belt is inadmissible in any civil action. Wyo. Stat. § 31-5-1402 (1977).