



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #792

### **Primary Enforcement of Seat Belt Laws (DOT -- State Patrol)**

[LFB 2009-11 Budget Summary: Page 646, #7]

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#### **CURRENT LAW**

With limited exceptions, no person may operate a motor vehicle in this state unless he or she is wearing a seat belt, any passengers who are at least eight years old are also wearing a seat belt, and any child passengers under the age of eight are properly restrained in a child safety seat or booster seat. Also, with certain exceptions, no person over the age of eight may be a passenger in a motor vehicle unless the person is wearing a seat belt.

A law enforcement officer may issue a citation for the failure to comply with driver or passenger seat belt laws, but may not make a traffic stop for the sole purpose of determining compliance with these requirements, except that he or she may make a traffic stop if the violation involves child passenger restraint requirements.

Any driver who violates the driver or passenger seat belt requirements (for passengers who are at least eight years old), and any passenger who is at least 16 and who violates the passenger seat belt requirements, is subject to a forfeiture of \$10, at the discretion of the court. No penalty assessment or other surcharges and fees that are normally levied for traffic violations are levied for violations of these seat belt laws. [A driver who violates the child safety restraint requirements is subject to a forfeiture of between \$25 and \$200, depending upon the age of the child and the number of prior offenses, and is subject to a penalty assessment and other traffic surcharges and fees.]

#### **GOVERNOR**

Delete the provision that prohibits law enforcement officers from making a traffic stop for the sole purpose of determining compliance with seat belt laws. Increase the forfeiture for a

violation of driver or passenger seat belt requirements, from \$10 to \$25. Specify that these provisions take effect on the day after publication of the budget act and that the increased forfeiture first applies to offenses committed on that date.

## **DISCUSSION POINTS**

1. Wisconsin has what is known as a "secondary enforcement" seat belt law since a violation of the seat belt law can not be the primary reason for making a traffic stop. So-called primary enforcement seat belt laws allow law enforcement officers to make a traffic stop solely for a seat belt law violation. As of March, 2009, 26 states had primary enforcement seat belt laws, and at least six other states are considering adopting such a law.

2. Advocates of primary enforcement seat belt laws note that such laws result in higher seat belt usage rates, which, in turn, reduces accident fatality rates and injury severity. In 2008, the average seat belt usage rate in secondary enforcement states was 75%, while the usage rate in primary enforcement states was 88%, or 13 percentage points higher. A 2006 study found that the traffic accident fatality rate (measured as traffic deaths per 100,000 vehicle-miles traveled) was 17% higher in secondary enforcement states than in primary enforcement states.

3. Seat belt usage rates are estimated using annual, observational studies using a standardized methodology developed by the National Highway Traffic Safety Administration (NHTSA). In 2008, Wisconsin's seat belt usage rate was estimated at 74%, while the national average was 83%. Based on studies of states that adopted a primary enforcement law after previously having a secondary enforcement law, NHTSA estimates that about 40% of persons who do not wear seat belts before the adoption of a primary enforcement law will begin wearing them with the law change. In Wisconsin, that could increase the seat belt usage rate by approximately 10 percentage points, or to about 84%. Actual results would depend on many factors, including how aggressively the seat belt law is enforced.

4. Opponents of seat belt laws say that the use of a seat belt should be a personal choice. They argue that while most other traffic laws are designed to protect the safety of all drivers, passengers, and pedestrians, the decision to use or not use a seat belt has little bearing on the safety of others. Others fear that wearing a seat belt may make it more difficult to extricate themselves from a vehicle involved in a traffic accident.

5. Seat belt law advocates counter by noting that belted drivers are more likely to remain in the driver's seat during the course of an accident and, thus, are more likely to maintain or regain control of a vehicle, perhaps helping them avoid more serious consequences. In addition, even if there were no safety benefits for other drivers and passengers, an increase in the use of safety belts lowers costs borne by everyone for such things as accident-related medical care and disability payments. According to a NHTSA study, the use of seat belts reduces the chance of death in a serious accident by about 45% and the risk of serious injury by about 50%. Moreover, initial medical costs for unbelted crash victims are, on average, 55% higher than for belted crash victims.

Since most medical costs are paid by private insurance or government healthcare programs, lower seat belt usage rates may be associated with higher societal costs, paid through insurance premiums and governmental expenditures for health care.

6. Another objection made to primary enforcement laws has been that they may allow law enforcement officers to make additional traffic stops, not primarily for the purpose of enforcing seat belt laws, but instead for investigating other possible law violations that would otherwise go undetected. This raises the possibility that some drivers who are not violating the law, other than the failure to use a seat belt, would be subject to time-consuming and possibly invasive traffic stops. This may be of particular concern among those who believe that they may be targeted on the basis of race, ethnicity, or other personal characteristics.

7. In addition to the primary seat belt enforcement provision, AB 75 contains a provision that would require the Department of Justice to establish a system for collecting data on traffic stops from law enforcement agencies in the state's eleven most populous counties, including information on the race and ethnicity of the driver. Such traffic stop data collection requirements may help allay the concerns over racial profiling occurring as the result of the enactment of a primary seat belt enforcement law, since it would create a process for monitoring law enforcement actions.

8. If the state's seat belt usage rate increased to 84% with the enactment of primary enforcement, then 16% of drivers would potentially be subject to traffic stops who are not currently subject to such stops. However, it should be noted that law enforcement officers already have the authority to make a traffic stop for any other traffic violations, and the percentage of drivers who are violating these other traffic laws at any given time may be much higher than 16%. For instance, several national studies have found that between 20% and 25% of drivers exceed the posted speed limit at any given time on freeways, and as high as 75% to 80% of drivers exceed the posted speed limit on certain, lower-speed limit streets. It could be argued, therefore, that the drivers who could be impacted by a primary enforcement law (those who violate seat belt requirements, but violate no other traffic laws) is likely to be a relatively small percentage of all drivers. Furthermore, if those persons use a seat belt, which is the intended effect of a primary enforcement law, they would remove that reason for a traffic stop.

9. In 2005, the federal government created the safety belt performance grant program (or "Section 406" grant program), to provide a one-time grant to states that had already enacted a primary enforcement law by the time of passage, enact a primary enforcement seat belt law prior to June 30, 2009, or despite not having a primary enforcement law, maintained a seat belt usage rate of 85% or above for the previous two years. Under the formula for the Section 406 program, Wisconsin would receive \$15,237,200 if a primary enforcement law is passed that is in conformity with federal standards. In addition, all states that qualify for a grant as the result of having or passing a primary enforcement law could receive an additional amount at the end of federal fiscal year 2009, since the amounts appropriated for states that do not qualify during the four-year period will be redistributed to those states that do qualify. NHTSA indicates that the state could possibly receive an additional \$3.0 million under this redistribution provision, although this amount would be

lower if other states also enact a primary enforcement law prior to the deadline.

10. To be eligible for a federal primary enforcement incentive grant and any redistribution of unused funds, the state must have enacted a primary enforcement law by June 30, 2009, and the law must be effective and enforced by July 1, 2009. If the Legislature decides to pass a primary enforcement provision in the budget bill that makes the state eligible to receive a Section 406 grant, passage must occur with sufficient time for the Governor to sign the law and have it be published by June 30. If the Committee decides to make the state eligible for a Section 406 grant, but believes that this timeframe for enactment of the budget bill could be problematic, a decision could be made to advance separate legislation containing the primary enforcement provision.

11. In order to receive a Section 406 grant, NHTSA has notified the Department that, in addition to allowing for primary enforcement of the state's seat belt law, AB 75 would have to be modified to subject a person who violates the seat belt laws to a mandatory forfeiture instead of a forfeiture imposed at the discretion of the court. The Committee could modify the bill to make this change in order to qualify for a Section 406 grant.

12. The state's current seat belt law allows for a number of exceptions, such as for persons who are required to make numerous vehicle stops in the course of their employment, and for persons operating or riding in an authorized emergency vehicle. NHTSA indicates that limited exceptions do not disqualify a state from receiving a Section 406 grant, and in its review of AB 75, did not identify any of the state's current exceptions as unacceptable. However, the agency does note that all exceptions would be subject to a final review prior to awarding a Section 406 grant, in order to determine whether they would have anything more than a minimal impact on traffic safety.

13. The bill's appropriation schedule does not reflect the receipt of a Section 406 grant. However, in letter provided to the Committee on March 17, 2009, the Secretary of the Department of Administration proposed that federal funds received under the Section 406 program could be provided for highway construction in 2009-10 to make up a portion of the \$34.6 million shortfall between the amount of federal economic stimulus funding that the administration assumed the state would receive, at the time the bill was drafted, and the lesser amount that the state actually received.

14. Of the Section 406 grant funds received by any state, at least \$1,000,000 must be spent on behavioral safety programs, such as safety education or enhanced traffic enforcement efforts. The remaining amounts may be spent on behavioral safety programs or safety-related infrastructure improvements, such as intersection improvements, pavement or shoulder widening, pavement marking, or the elimination of roadside obstacles. If the Committee decides to adopt the Governor's recommendation to pass a primary enforcement law and modifies the penalty provision to comply with NHTSA requirements, DOT's federal funds appropriations could be adjusted to reflect the Section 406 funds. The Department's FED appropriation for transportation safety could be increased by \$1,000,000 in 2009-10 to reflect the minimum amount that must be allocated for behavioral safety programs. For the remainder, the funding could be provided in the 2009-10 FED appropriation for state highway rehabilitation, which would give the Department the greatest flexibility for using the funds on safety-related infrastructure projects. The amount of this increase

would be \$14,237,200, plus any redistribution funds received. Since the amount of redistribution funds that would be received is unknown, the Committee could require that any amount received be used for eligible state highway rehabilitation projects.

## **ALTERNATIVES**

1. Adopt the Governor's recommendation to adopt a primary enforcement seat belt law and increase the potential forfeiture from \$10 to \$25.

2. Modify the Governor's recommendation, in order to make the state eligible for federal Section 406 grant funds, by specifying that the forfeiture for seat belt violations is mandatory, rather than at the discretion of the courts. Provide \$1,000,000 FED in 2009-10 for transportation safety and \$14,237,200 FED in 2009-10 for state highway rehabilitation to allocate Section 406 funding. Require the Department to allocate any additional Section 406 funding received by the state to safety-related infrastructure projects in the state highway rehabilitation program. [The funding reflected in this alternative is contingent upon the bill being signed and published by June 30, 2009.]

<b>ALT 2</b>	<b>Change to Bill Funding</b>
FED	\$15,237,200

3. Delete provision.

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