

# Mobility Dealer Liability

## *Vehicle-related Issues*

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# Vehicle Modifications By Dealers

- NHTSA's "safety system render inoperative prohibition"
- NHTSA part 595 disabled vehicle modifier exemptions to the prohibition
  - Key is modification after first retail sale
  - Not all standards have an exemption

## Registration With NHTSA Is A Prerequisite For Using Part 595 Exemptions.

- **Who must register?**
- Any repair business or individual who modifies vehicles after the first retail sale to accommodate persons with disabilities must register to take advantage of any of the exemptions afforded under the rule.
- The make inoperative prohibition (and so the exemptions) do not apply to individuals modifying their own vehicles, as long as they do not intend to make the changes for the purpose of resale. If you are making a modification to your own vehicle, Federal law does not apply, so you can do whatever you want (subject to any restrictions your state may impose). However, NHTSA urges individuals making such modifications to avoid unnecessary elimination of safety features

# Is there anything else I have to do to use the exemptions?

- Yes, modifiers must prepare written documentation that:
  - Identifies the vehicle that has been modified (this can be done with the VIN),
  - Contains a list of the FMVSS or portions of FMVSS, with which the vehicle may no longer comply and,
  - Identifies the new load carrying capacity (if the load carrying capacity has been reduced by more than 220 pounds). Modifiers should also inform the customer if the available load carrying capacity includes the weight of the user's wheelchair, if appropriate.
- This documentation can be as simple as notations on your invoice for the work performed. You must provide a copy to the customer. You must also retain a copy for five years. You do not send a copy to NHTSA, unless asked to do so by us.
- In addition, the modifier must affix a permanent label next to the original or alterer's certification label that:
  - Gives the modifier's name and physical address, and
  - States, "This vehicle has been modified in accordance with 49 CFR 595.6 and may no longer comply with all Federal Motor Vehicle Safety Standards in effect at the time of its original manufacture."
- This documentation and labeling must be done for each vehicle modified.

## **Does Part 95 Apply To *All* Changes To A Vehicle?**

- No. There are exemptions only as set forth in Part 595
- Example: fuel system standard does not have an exemption

## Can A Modifier Always Use The Exemption For FMVSS 208 To Disconnect Air Bags?

- No. There are two sections of 595 – one for a way to get an air bag switch approved and one setting forth the exemption that does not require pre-approval.
- Go the request for on-off switch route ( and an exemption would not be available) if a retrofit air bag on-off switch is sufficient to accommodate the individual's disability
  - Individuals who need an on-off switch but do not require *additional* vehicle modifications because of a recognized disability, e.g., short-statured individuals or the elderly, must continue to submit air bag on off switch requests to NHTSA
- The 595 exemption to FMVSS 208 applies only where a retrofit air bag on-off switch ***alone cannot*** accommodate the individual's disability and the air bag system is affected in the course of the necessary modification. An example is deleting the air bag because a client also needs a reduced-diameter steering wheel.

So, If The Only Thing You Need To Do To Accommodate The Vehicle User Is To Install An Air Bag On/Off Switch ...

- Follow the separate 49 CFR Part 595 section on switches.
- The vehicle owner must write a letter to NHTSA's Chief Counsel requesting permission to do so, according to the instructions found on web site at <http://www.nhtsa.dot.gov/airbags/rule/section09.html>

# Other Case By Case Exemptions When General Part 595 N/A

- In addition to writing to NHTSA for retrofit air bag on-off switches, there are also other occasions when this may be needed.

NHTSA's February 27, 2001 rule clarified that NHTSA intended to preserve its existing procedure for making **case-by-case** determinations on whether to waive enforcement against modifications that would **not** be subject to the part 595 exemption and that could not be made in a manner that did not compromise the vehicle's compliance with the standards.

*NMEDA and Advocates for Ohioans with Disabilities agreed that we need to provide some mechanism that will allow for adaptations not contemplated by [Part 595]. NHTSA has decided to continue to review these individual requests upon written submission. All requests should be submitted as early as possible, since the agency will need time to review the request and draft an appropriate response.*

# New Part 595 issue -- ESC

- **In response to concerns about vehicles modified to make them accessible to disabled individuals, NHTSA believes that no change is necessary as part of the ESC final rule.**
- Aftermarket modifiers who adapt vehicles for persons with disabilities would not likely be able to move **ESC** components without some level of assistance from vehicle manufacturers or **ESC** system suppliers.

*We strongly urge OEMs to work with vehicle modifiers to identify alternative locations or other modification methods so that the benefits of ESC may be retained for drivers of adapted vehicles. The number of vehicles that are popular for adaptations for persons with disabilities is quite limited, and we believe it is practical for manufacturers to provide assistance to modifiers who must remove OEM seats, supply alternative seats, or modify floors, so that the modifiers may relocate ESC components in a way that preserves the proper functioning of the system. (We understand that General Motors already provides some technical assistance to those adapting its vans for disabled persons.)*

- NHTSA would be willing to host a technical session to be attended by OEM engineers, **ESC** manufacturer engineers, and representatives of aftermarket modifiers to facilitate this discussion.

**In addition, NHTSA will consider whether it is necessary to add language to 49 CFR 595 to exempt the modifier from the "make inoperative" prohibition as it applies to FMVSS No. 126 in the event that: (1) The ESC sensor must be moved in the modification of a vehicle after first retail sale to accommodate a person with a disability, and (2) the OEM has not provided an alternative position.**

# More on Dealer Sales and Service

- More and more dealers do fewer and fewer mods and more equipment installations
- Dealer requirements and liabilities surrounding tires and vehicle weight
- Dealer lift installation standards
- Hand controls, and other equipment
- When to say “no”

## HAND CONTROLS: installation, usage; licensing

Numerous interested parties. All are needed to arrive at a solution.  
The matrix below shows who and what is involved.



# Still More Sales And Service Issues

- Liability involving used vehicles and inspecting used vehicles
- Liability involving vehicle loaners and test drives
- A word about recalls
- Dealer labeling

# Extra Dealer Labeling Example

- **! WARNING**
- **SAFETY EQUIPMENT DISCONNECTION NOTICE**
- ( ) OEM POWERED PEDALS
- ( ) OEM POWER STEERING COLUMN
- ( ) OTHER OEM POWERED DEVICE
- [\_\_\_\_\_]
- THE ABOVE-CHECKED OEM-POWERED DEVICE(S) OF THIS VEHICLE HAS (HAVE) BEEN **INTENTIONALLY DISCONNECTED** TO PERMIT THE SAFE INSTALLATION OF ADAPTIVE DRIVING CONTROLS, AS REQUESTED BY THE VEHICLE OWNER. THIS TAG IS AFIXED TO THE CORRESPONDING WIRING FOR THE DEVICE(S) THAT HAVE BEEN DISCONNECTED. RECONNECTION OF THE OEM-POWERED DEVICE(S) MAY CAUSE ADAPTIVE DEVICE MALFUNCTION, AND COULD LEAD TO AN ACCIDENT AND SERIOUS INJURY OR DEATH.

# Another Labeling Example

- **WARNING!**
- This vehicle is equipped with controls
- and/or seating position designed for
- a disabled person.
- **DO NOT** drive unless a
- suitable seat is installed.
- **NEVER** drive this vehicle
- unless you have received proper training.

# NMEDA And ADA Delivery Sheets

- **DISCLOSURE**

- Specific information given in the owners manuals provided by the manufacturer may supersede the above recommendations. **Please contact the manufacturer(s) of the equipment listed above for additional information regarding the safe use and operation of any equipment installed on your vehicle.**
- **! WARNING: Failure to follow the instructions provided herein can result in an accident, personal injury or death.**

- **ACKNOWLEDGEMENTS**

- **It is acknowledged that** this vehicle has been modified to meet the specific needs of the purchaser. The vehicle may not handle, turn, accelerate, or stop in the same manner as an unmodified vehicle. For example, additional time and distance may be required for accelerating or stopping, and maneuvers must be executed at a lower rate of speed. For this reason, only properly trained persons should use or operate the vehicle and its equipment, and only in strict accordance with the instructions provided.
- **It is acknowledged that** the use of available seatbelts, shoulder harnesses and wheelchair restraints by all operators and occupants of the vehicle is mandatory when the vehicle is in motion.
- It is acknowledged that it may be dangerous to use this vehicle and/or the installed equipment without complying fully with the instructions in the applicable Owner's Manuals and any and all additional instructions provided by \_\_\_\_\_ personnel. Those persons not trained in the proper use and operation of the vehicle and/or installed equipment will not be permitted to use/operate the vehicle or equipment.
- **It is understood that** any comments, questions or concerns with respect to the proper
- and safe use of the vehicle or its equipment may be addressed to \_\_\_\_\_, and that \_\_\_\_\_ may be contacted 24 hours a day, 7 days a week through its emergency paging system at \_\_\_\_\_.
- **It is understood that** the vehicle and all equipment should be regularly maintained in accordance with the applicable Owner's Manuals in order to enhance the proper/safe operation of the vehicle and its equipment. Preventive maintenance should be regularly performed. Under no circumstances should the vehicle or its equipment be modified without the prior written consent of \_\_\_\_\_.
- **WARNING**
- **NEVER** operate the vehicle unless all equipment is operating properly.

# DELIVERY SHEET DOES 2 THINGS

- RISK REDUCTION THROUGH DISCLOSURE, WARNING AND POSSIBLE ADMISSION/ACCEPTANCE
- DOUBLE CHECK BY DEALER THAT PDI DONE RIGHT

# Disabled And Non-disabled Vehicle *Users*

- From talking about the vehicle, let's now talk about the people
- The importance of proper installation and user training
- The importance of driver evaluations
- Non-disabled users -- issues

Two issues, whether a prescription should be required and who should be considered qualified to write that prescription, produce a divergence in opinion.

- Those supporting prescriptions say that the determination of what modifications are necessary is typically done by means of a driver evaluation and prescription for driving equipment provided by a qualified specialist.
- Noting that the technology currently available for use by persons with disabilities to drive independently or to ride safely as a passenger in a vehicle is advancing and constantly changing and improving, it is argued that trained individuals are needed to keep up with the technology and how that technology can best be used.
- Those supporting this view include the American Occupational Therapy Association, ADED, and NMEDA, among others.

## On the Other Hand

- Those opposed to mandatory prescriptions argue that excluding individuals who are not certified driving rehabilitation specialists from evaluating and prescribing vehicle modifications would unnecessarily increase the burden on the disabled community, increasing costs and limiting access to needed vehicle modifications (particularly in rural areas).

# Cases on Mobility DEALER Liability

- Cases that do NOT involve injury or death:
  - lemon laws -- who is responsible?
    - “Regular” lemon laws; second+ owners - used cars – mfr responsible
    - Equipment for the disabled lemon laws
- Cases that DO involve injury or death: product liability
  - You are liable for what you do; importance of insurance
  - Indemnification from mfr for mfr related design or manufacturing or failure to warn
- Keeping the proper paperwork to reduce risk

# Case Examples

- Utah 15 person van case
- The court concluded that plaintiff did not present any credible evidence establishing a genuine issue of material fact related to Ford DEALER's negligence. Dealer's comments about the van's center of gravity are insufficient to demonstrate that dealer knew or should have known of the alleged rollover defect in the van.
- Plaintiff did not show that Dealer breached its duty to warn its customers of any defects in the subject van of which it knew or should have known.
- The court also concluded that the Utah law precludes a strict liability claim against the van's seller when the van's manufacturer, Ford, is named in the suit, and when there is no evidence that the seller knew of or contributed in any way to the van's defective condition

- A 10-year-old disabled boy was burned to death and five others were injured in a freak accident when his family's van suddenly caught fire while traveling on Interstate 95
- A wheelchair ramp had recently been installed beneath the van and slipped or broke loose, according to the Florida Highway Patrol. The ramp likely rubbed against the drive shaft, which broke and punctured the fuel tank, troopers said.



# What's foreseeable? What to do?

- **A Tragic Accident**
- **Vehicles Adapted for Disabled Are Covered by Few Rules – ie no required kill switch**
- **Balancing a Desire to Drive**
- The 23-year-old quadriplegic. His customized van was traveling at about 70 miles per hour when it careened off the road .It bumped through a low-lying corn field and bounced off hay bales before coming to a halt at the base of a crabapple tree, according to a police accident report and a survey of the scene.
- Thanks to an airbag, the young man wasn't badly injured. But the impact broke the harness that secured his motorized wheelchair in place and Mr. Brown found himself sprawled across the van's midsection. He couldn't pull himself back into his chair, the police report says. The Dodge's resting place was a short walk from the nearby highway, but the van lay obscured under a grove of trees. There is no cellphone service in that remote part of the Allegheny Mountains.

# No Effort Steering Case

- A federal district court judge in Iowa ruled that plaintiffs could not prove that either General Motors Corp. or the installer of a "no-effort" steering system caused the accident in which a handicapped driver and his wife were injured. Sabers et al. v. General Motors Corp
- Robert Sabers was driving the 1990 Chevrolet G-20 van on a Minnesota highway when he struck a car parked on the shoulder of the road. The plaintiffs claimed that the van's relay rod separated from the pitman arm, causing a loss of steering control.
- GM had supplied the incomplete van to a dealership, which contracted with a conversion company to convert the vehicle to a recreational van before sale. The conversion company contracted with the mobility dealer to install devices allowing Robert Sabers to get in and out of the van, and to drive it. The mobility dealer installed no-effort steering, which allows a driver to turn the wheel with a very light touch. While installing the system, Siebert disassembled the relay rod from the pitman arm. Suits filed against GM and the mobility dealer were consolidated.
- The opinion states, "Although plaintiffs need not show either GM's or the mobility dealer's negligence was the sole cause of injury, they must establish that one theory is more probable than all others." **the Judge noted that even if GM's failure to include a cotter pin constituted a design defect, there was no proof that the alleged defect proximately caused the accident, and further, *any claim that the mobility dealer committed a negligent act was "pure speculation"***

# Final Word – One Offs

- The Danger With One-offs Is That, By Definition, The Vehicle Is Unique And There Is No Previous “Pattern” Or “Template” To Follow
- NHTSA Liability
  - We Are Assuming That The Work Is Done AFTER First Retail Sale;
  - What You Can Do Is Therefore Governed By Part 595 Of NHTSA Regulations
- Product Liability
  - Even If The Work Is Permissible Under Part 595, You Still Need A Good Engineering Basis To For The Design And Work Being Safe And Defect-free.
- Things To Consider
  - Is The Profit On The Project Worth The Risk?
  - Can The Owner Be Put Into A “Standard” Modified Vehicle Rather Than Create A Unique Configuration