Approved August 14, 1985
Date

MINUTES OF THE House COMMITTEE ON Transportation.

The meeting was called to order by Representative Rex Crowell at
Chairperson

1:30 ~~a~~m./p.m. on February 28, 1985 in room 519-S of the Capitol.

All members were present except: Representative Joe Knopp, excused.

Committee staff present:

Hank Avila, Legislative Research Department
Fred Carman, Office of the Revisor of Statutes
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Ms. Kathleen Sebelius, Kansas Trial Lawyers Association
Mr. Ron Smith, Kansas Bar Association
Mr. Kelly Wendelyn, Chanute, Kansas
Mr. Calvin Rose
Mr. J. D. Spradling, Topeka, Kansas
Mr. Richard Schlegel, ABATE, Inc.
Mr. Oscar Lynn, Topeka, Kansas

The meeting was called to order by Chairman Rex Crowell and the first order of business was a hearing on HB-2188 concerning requirements for use of safety belts in motor vehicles.

Ms. Kathleen Sebelius of the Kansas Trial Lawyers Association testified in opposition to HB-2188.

Mr. Ron Smith of the Kansas Bar Association, presented testimony in opposition to HB-2188. (See Attachment 1)

Mr. Smith noted that the Kansas Bar Association supports the public safety concepts embodied in HB-2188, but opposes the Subsection 4(b), mitigation of damages. He cited the case Taplin vs. Clark, in which the court decided that since the legislature had failed to provide that non-use of safety belts was negligence, there was no duty to wear a safety belt.

In response to a question from the Committee Ms. Kathleen Sebelius of the Kansas Trial Lawyers' Association said her understanding of the federal guidelines is that the statutes must have the mitigation section in it in order to meet the guidelines.

Mr. Kelly Wendelyn of Chanute, Kansas, spoke in opposition to HB-2188, and said that if mandatory safety belt legislation is passed, then there should also be laws prohibiting hang-gliding, sky diving, boxing, football, smoking and even swimming, as many people are killed during these activities each year. (See Attachment 2)

Mr. Calvin Rose testified in opposition to HB-2188.

Mr. J. D. Spradling spoke in opposition to HB-2188. During his testimony he displayed a large poster depicting his viewpoints. Mr. Spradling stressed that enactment of the mandatory seat belt legislation would be depriving citizens of their rights as a free people.

Mr. Richard Schlegel of ABATE, Inc. spoke in opposition to HB-2188. Mr. Schlegel distributed copies of the U.S. Dept. of Transportation rules and regulations from the Federal Register, concerning the mandatory seat belt law. (See Attachment 3)

Mr. Oscar Lynn, Topeka, Kansas, testified in opposition to HB-2188. He told the Committee, he believes the mandatory seat belt legislation is not necessarily a safety issue, but a case of "dollar bills" between General Motors, the lawyers, the medical profession and the insurance companies.

There were no questions for Mr. Lynn. The hearing on HB-2188 ended.

The next business was Committee discussion and action on HB-2173 concerning the exemption of repossessed vehicles for which a Kansas title is being sought, which is registered in another state but financed by a Kansas financial institution, from the requirement for a vehicle identification number check if the vehicle will not be returned to Kansas.

A motion was made by Representative Spaniol to strike the language in Lines 39, 40, 41, and 42, and in Line 57 the words "for return" be stricken and insert "and such vehicle will not be returned". The motion was seconded by Representative Patrick. Motion passed.

A motion was made by Representative Spaniol to report HB-2173 as amended favorable for passage. The motion was seconded by Representative Patrick. Motion passed.

The next business taken up was Committee discussion and action on HB-2344 which exempts combinations of vehicles, which includes a slow moving vehicle which is an implement of husbandry, when moving from field to field from brake requirements on the second towed vehicle. It was moved by Representative Moomaw to recommend HB-2344 be reported favorable for passage. The motion was seconded by Representative Shore. Motion passed. Representative Erne requested to be recorded as voting "no".

The next business was Committee discussion and action on HB-2248 concerning the reporting of drivers of vehicles who unlawfully pass school buses while discharging children.

Representative Moomaw distributed a balloon and gave a subcommittee report on HB-2248. (See Attachment 4)

Representative Moomaw made a motion to adopt the amendments as described in the balloon on HB-2248. The motion was seconded by Representative Wilbert. Motion passed.

Representative Ott made the motion to report HB-2248 as amended favorable for passage. The motion was seconded by Representative Erne. Motion passed.

The next bill taken up for Committee discussion and action was HB-2348 concerning the designating of certain highways in Johnson County as "Shawnee Mission Parkway".

The motion was made by Representative Patrick that HB-2348 be recommended favorable for passage. The motion was seconded by Representative Snowbarger. Motion passed.

The next bill taken up for Committee discussion and action was HB-2295 concerning cities issuing general obligation bonds for the purpose of paying the State's portion of highway improvement projects within a city.

The motion was made by Representative Snowbarger to recommend HB-2295 favorable for passage. The motion was seconded by Representative Brown.

Representative Ott asked if KDOT is required to repay the city. Ed DeSoignie of KDOT said it is discretionary on the part of the Secretary of KDOT.

A vote was taken on the motion to recommend HB-2295 favorable for passage. Motion passed.

MINUTES OF THE House COMMITTEE ON Transportation,

room 519-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on February 28, 1985.

The next business was Committee discussion and action on HB-2022 concerning taxation of gasohol. Representative Erne made the motion to report HB-2022 favorable for passage. The motion was seconded by Representative Moomaw.

Representative Patrick made a substitute motion to adopt a 3-year phase out as follows; beginning July 1, 1985, there would be a $.03 tax break, starting July 1, 1986 there would be a $.02 tax break and July 1, 1987 it would be abolished. The motion was seconded by Representative Spaniol.

Representative Spaniol distributed information from the Legislative Research Department regarding what the effect would be on both increased receipts of revenue, as well as what effect there would be on city and county highway funds. (See Attachment 5) Representative Spaniol expressed support for Representative Patrick's motion.

A vote was taken on the substitute motion. Motion failed.

Representative Snowbarger made a substitute motion to go to a $.03 tax break July 1, 1985 and a $.02 tax break July 1, 1986. The motion was seconded by Representative Wilbert.

A vote was taken on the substitute motion. Division was requested. Motion failed 10-9.

A substitute motion was made by Representative Ott to phase the tax break down to $.03 effective July 1, 1985. The motion was seconded by Representative Freeman. A vote was taken. A division was requested. The motion passed 13-5.

Representatives Moomaw, Patrick, Shore, Schmidt and Smith requested to be recorded as voting "no".

A motion was made by Representative Erne to recommend HB-2022 as amended favorable for passage. The motion was seconded by Representative Patrick. Motion passed.

The meeting was adjourned at 3:30 p.m.

Rex Crowell

Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation DATE: 2-28-85

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Kim Winship	Parsons, KS	KSNA
J.R. Spradling	N/A	KS
Brad Moffett	Topeka	SURMC
Susan Blush	Silver Lake	SVSN
Mary Mills	Topeka	SURMC
Mary Heiman	Baileyville KS	SVSN
Cindy Nordhus	Baileyville, Ks.	SVSN
Lucinda Herrera	Topeka, Kansas	SVSN
Jesh Willes	Topeka, Kansas	SVSN
Janice Chapman	Mound Valley, KS	LCC-Parsons
Dana Heimerman	Chetopa, Ks	LCC-PSN
Kim Farran	Parsons, Ks	LCC-SN
Gretchen Jones	Columbus Kansas	LCC-SN
Rita M. Ybarra	Parsons KS	LCC-SN
Tom Deegan	Topeka	KEA
Bill Sneed	Topeka	Ks Assn of Def. Counsel
Richard Harmon	Topeka	KS Assn. of Prop/Casualty
Michelle Gerard	Concordia	student nurse spkw CCCC
Rhonda Epp	Concordia Kansas	CCCC-SN
Ron Smith	Topeka	KS Bar Assn
Kathleen Sebelius	Topeka	KTLA
Beth Cocolski	Paxico ks	KSNA -
Richard D. Schlegel	Manhattan, KS	ABATE

RON SMITH
Legislative Counsel

KANSAS BAR ASSOCIATION

HB 2188
House Transportation Committee
February 28, 1985

Mr. Chairman. Members of the committee. My name is Ron Smith. I am Legislative Counsel for the Kansas Bar Association.

The Kansas Bar Association represents 4,200 of the state's 5,800 attorneys. Our attorney-members are in every county, practice all types of law, represent both plaintiffs and defendants. Their common bond is they want a good legal system within which they can help Kansas citizens with their problems.

Our legislative policies are considered by the Legislative Committee of the KBA, which makes recommendations to the Executive Council. The Council consists of 21 lawyers from across the state. Ten members are elected by geographic districts. Many are from small towns; others are part of the largest firms in the largest cities of our state. Our Executive Council includes members of the Judiciary.

We believe our Legislative Positions constitute a considered, rational and even-handed approach to the important issues facing the Kansas Legislature.

HB 2188 is a "model" safety belt act. There are, however, two separate issues in each of these bills: (1) Public Safety, and (2) civil procedure evidentiary matters.

> **The Kansas Bar Association discussed this legislation at its February 8th Executive Council meeting. The Council took the position that it wholeheartedly supports the Public Safety concepts embodied in the bill, but opposes the Subsection 4(b) mitigation of damages.**

Others have given you far superior statistics than I can to support the public safety aspects of HB 2188. KBA supports the mandatory use of seat belts.

I've heard three reasons advanced for this bill:

1. Saves lives.

2. Reduces or prevents injuries.

3. Controls Health Care Costs. Bob Storey put considerable emphasis on this aspect.

Attachment 1
2/28/85

Everything in HB 2188 except Subsection 4(b) is geared to promote these three concepts.

I'd like you to note some of the special language of the bill because of some unanswered policy questions.

First, in Line 31, the phrase "at all times when the vehicle is in motion." This apparently means that a buckled seatbelt is required under subsection 3(a) of each front seat passenger only when the car is in motion. What about the person sitting at a stoplight unbuckled, who gets hit from the side and is injured?

Second, someone mentioned that Section 4(a) makes "persons violating" Section 3(a) liable for the fine. You will need to clearify who is responsible for a minor. I don't think you can fine a minor, especially one under 14 years of age.

Third, if damages are mitigated, does that include mitigation of PIP benefits paid under our no fault compensation law? I don't think it was intended to, nor should it.

Finally, while there may be a direct, tangible public benefit of a mandatory seat belt law, what is the direct public benefit if we change our evidentiary law to allow mitigation of damages?

I. Compliance with Federal Guidelines

The ultimate goal of the federal government has to be to get people to buckle up.

While HB 2188 as drafted meets federal DOT guidelines, several conferees indicated few of the states already adopting mandatory seat belt laws are in full compliance with the FDOT guidelines. The important thing about "guidelines" is the fact that they are just that: guidelines. They have not been sent to the states as a take-it-or-leave-it proposition. If these guidelines weren't flexibile, the most expedient way of handling this issue would have been for Congress to mandate a national seat belt law.

That has not happened. I suspect it will not happen. And I think the chances for guidelines to be rewritten between now and 1989 are good.

Bob Storey indicated to you the last time in response to a question that if the fine were lowered to $20 instead of $25, he wouldn't mind. If that is done, it will not comply with the CURRENT federal guidelines. But I think you can see that a difference of five dollars in the fine is not going to have a material effect on whether people use seatbelts. You can make the same argument for deletion of subsection 4(b) regarding mitigation of damages. The theory is the same, because the purpose of the law is to get people to buckle up.

II. Mitigation of Damages in Kansas

John Jurcyk, representing the Kansas Association of Defense Counsel, stated to the Senate committee: its "unfair for defendants to be held liable for negligence if a seat belt would have mitigated the plaintiff's damages." I suggest that is a very narrow view.

Who caused the injury? The plaintiff? Or the Defendant? John's statement overlooks the concept of what we lawyers call "proximate cause." The Pattern Instructions for Kansas speak to the definition:

> "A proximate cause of an injury is a cause which in direct, unbroken sequence produces the injury. It is one without which the injury would not have occurred." (PIK 5.01)

Kansas courts have struggled with nonuse of seat belts as mitigation of damages in auto cases. To date, the courts have ruled since the legislature has not made nonuse of belts "negligence," the court will not allow the nonuse of belts to be given to the jury for purposes of mitigation of damages.

The issue has presented Kansas courts a Hobson's Choice for years. But let's be clear.

> 1. Mitigation of damages is not a <u>public safety</u> consideration.
>
> 2. Including subsection 4(b) in federal guidelines does not make mitigation of damages a public safety matter.
>
> 3. Mitigation of damages is not done in the name of the public, nor does the public directly benefit.
>
> 4. Mitigation of damages will not save one life, or lessen the injuries of a single person. It's purpose has more to do with post-accident cost-savings than promoting use of seat belts.

In 1981, the Kansas Court of Appeals heard the case <u>Taplin v. Clark</u>. This case is in your handout. The defendant tried to introduce a "seat belt defense," evidence that the plaintiff was not wearing a seat belt and thereby contributed to his own damages. Justice Praeger wrote that since the legislature failed to provide that non-use of belts was negligence, there was no duty to wear a belt.

HB 2188 creates this duty the court talks about. It makes it mandatory that belts be used. However, the bill requires that nonuse of belts be evidence used to mitigate damages.

The Kansas courts handle hundreds of auto negligence cases each year. Judges need a rule with flexibility. Section 4(b) does not provide flexibility.

If you enact this bill without Subsection 4(b), the Supreme Court, after hearing from all sides, after receiving bulky documents with statistics, court decisions, and other relevant information, can decide to implement a mitigation rule on its own through an opinion. At that point, the legislature can consider whether to statutorily enact, or change, the court's decision on mitigation of damages based on considerably more information than is now available to this legislature.

Give the Supreme Court an opportunity to write an opinion which outlines the flexibility district courts will need to mitigate damages, and perhaps they will give the legislature some guidance on what mitigation rule they think is most appropriate under the widest possible circumstances.

III. Mandating Evidentiary Changes in our Civil Procedure Code

HB 2188 goes far beyond merely mandating use of seatbelts to avoid paying for air bags. Fed-DOT forces the Kansas legislature to do two things:

1. Mandate the use of seat belts, a public safety issue.

2. Mandating changes in our code of civil procedure on evidentiary matters to conform to federal notions of what is appropriate civil procedure to the exclusion of the 10th Amendment giving states authority to set up their own methods of government.

KBA doesn't mind Federal mandating of public safety. But if legislatures begin allowing the federal government to mandate the provisions in our code of civil procedure, what is to keep Congress from mandating all of our civil procedure rules, or the costs of our judiciary, or whether certain types of lawsuits should be allowed, and the method by which they are litigated?

What prevents Congress from creating a national solution to every sticky legal problem?

There are some fundamental principles at stake here that are far more important than the cost of air bags. At stake are the state's rights under the 10th Amendment.

Do we need state legislatures anymore if all legislators do is ratify what federal highway officials dictate to you?

Section 4(b) is not good precedent for state legislatures.

Yes, Kansas has adopted many of the federal rules of civil procedure as our own. But we've not been compelled to do it. We did so voluntarily.

Yes, federal highway funds have been threatened to be withheld if we didn't adopt the 55 mph speed limit. But that was a safety and conservation matter, not an evidentiary one.

IV. Fairness Problems

Assume a negligent driver with passengers in the front seat and back seat hits a tree. Everybody has the same injuries, $10,000. The two passengers sue the driver in separate lawsuits.

In Lawsuit #1, with section 4(b), the front seat passenger has the fact that he was unbuckled given to the jury to mitigate damages. Let's assume he collects $8,000.

In Lawsuit #2, same law, same negligent driver, evidence concerning the unbuckled seat belt in the back seat cannot go to the jury. He collects $10,000.

The negligence of the driver was the same in both instances.

V. Effect on Court Dockets

Section 4(b) can be titled the Civil Engineering and Economists Full Employment Act of 1985.

Section 4(b) takes a simple auto negligence case--who hit whom and what are the damages--and gives it all the complexity of a products liability case.

1. Each side will have to hire expert engineers, accident reconstruction experts, and pay to take their depositions and have testimony in court to prove or disprove mitigation of damages.

2. This will drive up costs of litigation for all parties, which may adversely

impact EVERYONE's Auto insurance;

3. It might lengthen some trials by perhaps several days;

4. The public does not benefit from mitigation of damages; only the defendant and defendant's costs of litigation are benefited.

5. Section 4(b) will not save one more life, or lessen one injury!

Conclusion

KBA supports the public policy of mandating use of seat belts, because they will save lives and reduce injuries. We have no problem with the amendments suggested by other conferees. KBA cannot support subsection 4(b) because it is an evidentiary matter that has little relavence towards saving lives or reducing injuries, and should not be mandated by Washington. KBA suggests deleting section 4(b) and reporting the remainder of the bill, as amended, favorable for passage.

(626 P.2d 1198)

No. 51,603

DEBRA M. TAPLIN, a minor, by and through her Mother and Father and next of friends, GAIL H. TAPLIN and JEANEEN TAPLIN, *Plaintiffs-Appellees*, v. SANDRA CLARK; VERNON CLARK and JOAN CLARK, husband and wife, *Defendants-Appellants*.

SYLLABUS BY THE COURT

COMPARATIVE NEGLIGENCE—*Automobile Personal Injury Action—Evidence of Passenger's Nonuse of Seat Belt.* A passenger in an automobile has no legal duty to use an available seat belt in anticipation of the driver's negligence, and evidence of nonuse is inadmissible under the comparative negligence doctrine either on the issue of contributory negligence or in mitigation of damages (following *Hampton v. State Highway Commission*, 209 Kan. 565, 498 P.2d 236 [1972]).

Appeal from Riley District Court, division No. 1; RONALD D. INNES, judge. Opinion filed April 24, 1981. Affirmed.

John W. Mize, of Clark, Mize & Linville, Chartered, of Salina, for appellants.

John F. Stites, of Stites, Hill & Wilson, of Manhattan, for appellees.

Before JUSTICE PRAGER, presiding, ABBOTT, J., and J. PATRICK BRAZIL, District Judge, assigned.

PRAGER, J.: This is an action by a passenger against the driver of an automobile to recover damages for personal injuries sustained in a one-car accident. The plaintiff, Debra M. Taplin, was a passenger in the rear seat where a seat belt was installed and available for use. She failed to "buckle up." The district court sustained plaintiff's motion for summary judgment on the issue of liability. The district court had previously sustained plaintiff's motion in limine which had the effect of precluding defendant from introducing evidence of plaintiff's failure to use the available seat belt. Failure of plaintiff to use her seat belt was the only act of negligence asserted against plaintiff by defendant. The case was submitted to the jury on the issue of damages only and plaintiff was awarded substantial damages.

The basic issue raised on the appeal is essentially this: Under the Kansas comparative negligence law (K.S.A. 60-258a), may a jury consider as a negligence factor to reduce a negligent driver's liability for damages the failure of a passenger in an automobile to use an available seat belt? Prior to the adoption of comparative negligence, effective July 1, 1974, the Kansas Supreme Court held that a driver had no legal duty to use an available seat belt and that evidence of nonuse was not admissible on the issue of either

contributory negligence or mitigation of damages. In *Hampton v. State Highway Commission*, 209 Kan. 565, 579, 498 P.2d 236 (1972), the court, after noting a decision of the Alabama Supreme Court in *Britton v. Doehring*, 286 Ala. 498, 242 So. 2d 666 (1970), reasoned as follows in rejecting the seat belt defense:

> "Our own legislature has required new cars sold after October, 1966, to be equipped with seat belts (K.S.A. 1971 Supp. 8-5,135) but it has not made their use mandatory, nor has it required them to be installed on older vehicles. Plaintiff was therefore not violating any statutory duty. Neither, we believe, was he falling below the standard required of the reasonable, prudent man. We have nothing before us on which we could confidently base a finding that the accepted community standard of care requires one to buckle up routinely; experience dictates to the contrary. Some people, in fact, deliberately refuse to wear seat belts for fear of aggravating an injury or being trapped in a collision. If such persons are to be declared unreasonable in their concern for their own safety as a matter of law, we believe with the Alabama court that at this stage the declaration should be legislative and not judicial.
>
> "While as a general rule one must use reasonable diligence to mitigate one's damages once the risk is known (*Atkinson v. Kirkpatrick*, 90 Kan. 515, 135 Pac. 579), one is not required to anticipate negligence and guard against damages which might ensue if such negligence should occur (*Rig & Reel Co. v. Oil & Gas Co.*, 111 Kan. 37, 205 Pac. 1020). So likewise the traveler has the right to assume the highway is reasonably safe for travel—as the jury here was instructed without objection.
>
> "In short, there was no duty to use a seat belt, either under the common law standard of due care or to mitigate damages. That being so, the trial court did not err in excluding evidence of plaintiff's nonuse for it was not relevant to any issue to be determined." pp. 580-81.

The factual circumstances in this case are somewhat different from those in *Hampton*, because here the defendant made an offer of proof prior to the determination of the issue by the trial court. The evidence proffered by the defendant would have shown that, prior to the accident, plaintiff had completed a driver's education course where she had been instructed to wear a seat belt when occupying a vehicle. The only window broken in the accident was the front windshield. Kenneth Razak, an automobile accident reconstruction expert, examined all pertinent data relating to the accident. He researched the numerous and exhaustive studies which had been made demonstrating that seat belts are effective protective devices to guard occupants of automobiles against injuries in automobile collisions. He testified in a deposition that, in his expert opinion, had the plaintiff been wearing the seat belt which was installed in the automobile, she

would not have sustained facial lacerations in the accident and her injuries would thus have been reduced.

The defendant concedes that, under the former contributory negligence doctrine, evidence of plaintiff's nonuse of the seat belt was inadmissible under *Hampton*. Defendant argues, however, that *Hampton* is no longer valid law because of the adoption of the system of comparative negligence in Kansas in 1974. She contends, in substance, that the rule barring evidence of nonuse of seat belts in automobile negligence cases, as espoused in the *Hampton* case, is obsolete and should be abandoned. Defendant maintains that, since Kansas no longer adheres to the harsh contributory negligence doctrine which barred a plaintiff completely from recovery if she were in the slightest degree negligent, much of the underlying rationale of *Hampton* has disappeared. Defendant further contends that *Hampton* is distinguishable on its facts from the present case because of defendant's proffered evidence that plaintiff would not have sustained the injuries of which she complains, if she had been wearing her seat belt, and that, under comparative negligence, the question of whether a passenger in a motor vehicle who fails to wear his seat belt has exercised reasonable care for his or her own safety is a question of fact which should be left for the jury to determine. The defendant cites cases from other states which have adopted the system of comparative negligence and which have suggested the seat belt defense might be asserted, either to reduce the percentage of fault or to mitigate damages. *Bentzler v. Braun*, 34 Wis. 2d 362, 149 N.W.2d 626 (1967); *Harlan v. Curbo, Guardian*, 250 Ark. 610, 446 S.W.2d 459 (1971); *Fischer v. Moore*, 183 Colo. 392, 517 P.2d 458 (1973).

Counsel for the plaintiff takes a contrary position, maintaining, in substance, that *Hampton* declares the established law in Kansas and that any claim that *Hampton* is distinguishable from the present case is without merit. The plaintiff, in her brief, although recognizing the decisions referred to by the defense, points out that it is the established majority rule that the failure of a passenger in an automobile to use a seat belt is not available as a defense either in establishing a cause of the accident or in mitigation of damages. There is an annotation on the subject in 95 A.L.R.3d 239, which discusses the reported cases where courts have considered whether the nonuse of an available seat belt is

evidence of comparative negligence. That annotation lists comparative negligence states which reject the seat belt defense as including Connecticut (*Melesko v. Riley*, 32 Conn. Supp. 89, 339 A.2d 479 [1975]), Mississippi (*D. W. Boutwell Butane Company v. Smith*, 244 So. 2d 11 [Miss. 1971]), New York (*Bartlett v. State of N.Y.*, 40 App. Div. 2d 267, 340 N.Y.S.2d 63 [1973]), and Washington (*Amend v. Bell*, 89 Wash. 2d 124, 570 P.2d 138 [1977]). There is obviously a split of authority on the issue, with a slight majority of the comparative negligence jurisdictions rejecting the seat belt defense.

As noted above, the basic question which we must determine is whether the adoption of the system of comparative negligence in Kansas in 1974 requires a change in the rule followed in *Hampton*. We hold that it does not, and that the rule established by *Hampton* is sound and should be retained. In the first place, we have concluded that the comparative negligence statute (K.S.A. 60-258a) did not change the basic duties required of drivers and passengers to be considered in automobile tort litigation. In *Hampton*, the opinion points out that the Kansas statute pertaining to the installment of safety belts then in effect, K.S.A. 1971 Supp. 8-5,135), although requiring new cars sold after October, 1966, to be equipped with seat belts, did not make their use mandatory or require them to be installed on older vehicles. It was further declared in the opinion that there was no accepted community standard of care requiring one to buckle up routinely and that experience dictated to the contrary. The court concluded that the existence of such a duty should be left up to the legislature.

Since *Hampton* was decided in 1972, the legislature in 1974 adopted the revised uniform act to regulate traffic on the highways which greatly expanded the former statutory scheme. The uniform act is now found at K.S.A. 8-1401 *et seq.* The present statute pertaining to the installation of safety belts and shoulder harnesses is K.S.A. 8-1749, which requires every passenger car manufactured or assembled after January 1, 1968, to be equipped with a lap-type safety belt assembly for all passenger seating positions and with at least two shoulder harness-type safety belt assemblies for the front seating positions. Subsection (*d*) authorizes the Secretary of Transportation to except specified types of motor vehicles or seating positions from these requirements when

compliance "would be impractical." At the time these statutory changes were adopted in 1974, the decision in *Hampton* had been in the books for a period of two years. It appears that by failing to so provide, the legislature decided that it should not impose upon drivers or passengers in automobiles a duty to use an available safety belt.

It is also important to note that K.S.A. 8-1598 prohibits a person from operating or riding upon a motorcycle unless wearing protective headgear and an eye-protective device. This section is mentioned to illustrate that where the legislature in its wisdom desires to make it mandatory for drivers or occupants of motor vehicles to use certain protective devices and equipment, it has not hesitated to do so. Apparently, it did not decide to do so in the case of safety belts. *Hampton* declares, without equivocation, that there is no statutory or common-law duty requiring a passenger in an automobile to use a seat belt. We find no provision in the comparative negligence law (K.S.A. 60-258a) which creates such a duty. We thus are constrained to follow the reasoning of the Kansas Supreme Court in *Hampton* as set forth above. We also adhere to the holding of the court in *Hampton* that the doctrine of avoidable consequences or mitigation of damages does not place a duty on a passenger to use a seat belt in anticipation of his driver's negligence.

For the reasons set forth above, we hold, in accordance with *Hampton v. State Highway Commission,* 209 Kan. 565, that, under the Kansas system of comparative negligence, it is not proper for a jury to consider as a negligence factor to reduce liability and damages the failure of a passenger to use an available seat belt.

The judgment of the district court is affirmed.

FIRST REGULAR SESSION

SENATE BILL NO. 43

83RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS DIRCK, SCOTT, WEBSTER, PANETHIERE, WIGGINS, BANKS, JONES, BASS, DYER AND GANNON.

Pre-filed December 1, 1984, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

172-2

AN ACT

Relating to the use of seat belts in certain motor vehicles, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. 1. As used in this section, the term "passenger car" means every motor vehicle designed for carrying ten persons or less and used for the transportation of persons; except that, the term "passenger car" shall not include motorcycles, motorized bicycles, motor tricycles and trucks.

2. Each driver and front seat passenger of a passenger car manufactured after January 1, 1965, operated on a street or highway in this state shall wear a properly adjusted and fastened safety belt that meets federal national highway, transportation and safety act requirements; except that, a child less than four years of age shall be protected as required in section 210.104, RSMo. Each driver of a motor vehicle transporting a child four years of age or more, but less than sixteen years of age, in the front seat of the motor vehicle shall secure the child in a properly adjusted and fastened safety belt. No person shall be stopped, inspected, or detained solely to determine compliance with this subsection. This subsection shall not apply to a driver or passenger who possesses written verification from a physician that the driver or passenger is unable to wear a safety belt for medical reasons.

3. Each person who violates the provisions of subsection 2 of this section is guilty of an infraction for which a fine of twenty-five dollars shall be imposed. All other provisions of the law to the contrary notwithstanding, no court costs may be imposed under the provisions of this section.

4. The department of public safety shall initiate and develop a program of public information to develop understanding of, and insure compliance with the provisions of this section. The department of public safety shall evaluate the effectiveness of this section and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits to NHTSA and F.H.W.A. under 23 U.S.C. 402.

5. The provisions of this section shall become effective January 1, 1986.

b. The driver of a passenger automobile shall secure or cause to be secured in a properly adjusted and fastened safety seat belt system, as defined by Federal Motor Vehicle Safety Standard Number 209, any passenger in the front seat who is at least five years of age but less than 18 years of age.

3. This act shall not apply to a driver or *front seat* passenger of:

a. A passenger automobile manufactured before July 1, 1966;

b. A passenger automobile in which the driver or passenger possesses a written verification from a licensed physician that the driver or passenger is unable to wear a safety seat belt system for physical or medical reasons;

c. A passenger automobile which is not required to be equipped with safety seat belt system under federal law; or,

d. A passenger automobile operated by a rural letter carrier of the United States Postal Service while performing the duties of a rural letter carrier.

[4. Failure to wear a safety seat belt system, in violation of this act, shall not be considered evidence of negligence nor limit liability of an insurer nor diminish recovery for damages arising out of the ownership, maintenance, or operation of a passenger automobile. In no event shall failure to wear a safety seat belt system be considered as contributory negligence, nor shall the failure to wear a safety belt system be admissible as evidence in the trial of any other civil action.]

4. This act 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.

5. Enforcement of this act by State or local law enforcement agents shall be accomplished only as a secondary action when a driver of a passenger automobile has been detained for suspected violation of Title 39 of the Revised Statutes or some other offense.

6. A person who violates section 2 of this act *[shall for the first offense receive a warning stating the requirements of the law on the use of safety seat belt systems and the penalties for a second or subsequent violation. For a second violation, a person shall be fined $5.00. For a third or subsequent offense, a person]* shall be fined *[$10.00]* **[*$25.00*]** **$20.00**. In no case shall *motor vehicle* points be assessed against any person for a violation of this act.

*[7. Any person who is found guilty of violating this act five or more times in any three year period shall not be granted renewal of a driver's license from the State of New Jersey until such time

4. A driver operating a motor vehicle in reverse.

5. A motor vehicle with a model year prior to 1965.

6. A motorcycle or motor driven cycle.

7. A motorized pedalcycle.

8. A motor vehicle which is not required to be equipped with seat safety belts under federal law.

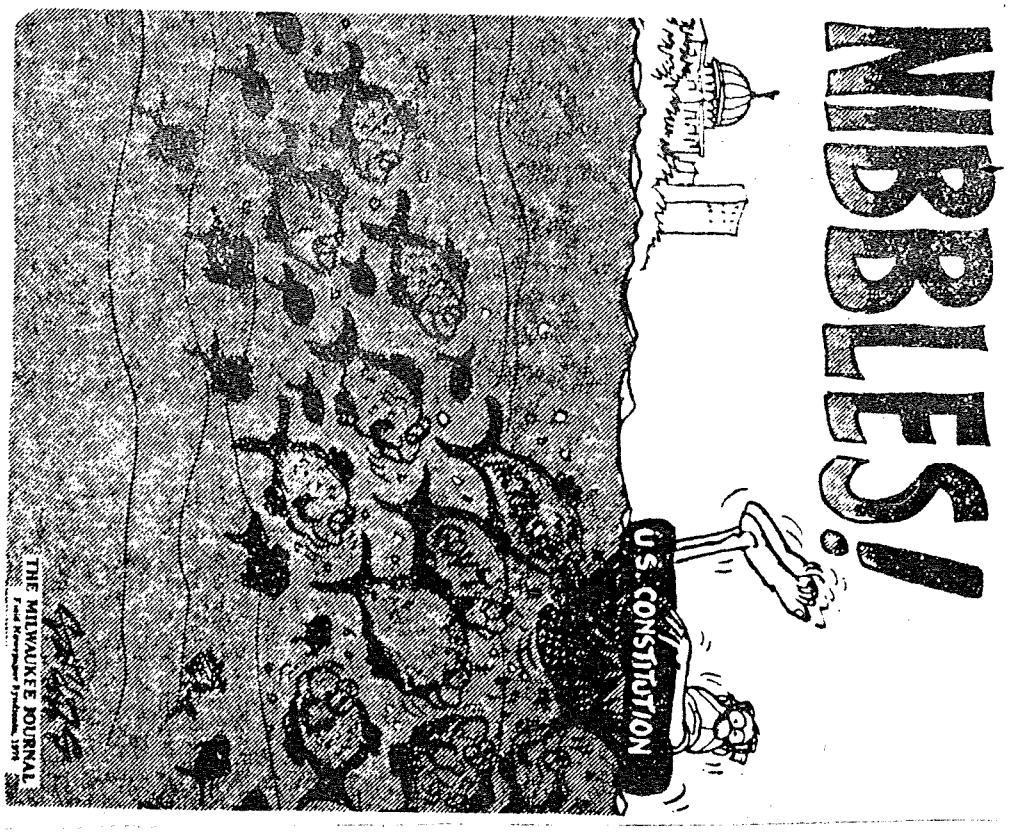
9. A motor vehicle operated by a rural letter carrier of the United States postal service while performing duties as a rural letter carrier.

(c) Failure to wear a seat safety belt in violation of this Section shall not be considered evidence of negligence, shall not limit the liability of an insurer, and shall not diminish any recovery for damages arising out of the ownership, maintenance, or operation of a motor vehicle.

(d) A violation of this Section shall be a petty offense and subject to a fine not to exceed $25.

U.S. SUPREME COURT JUSTICE WILLIAM RHENQUIST - "AMERICA COULD FIND ITSELF IN THE MIDST OF ANOTHER CIVIL WAR IF GOVERNMENT REGULATION OF PRIVATE LIVES ISN'T SLOWED."

PROPOSED SEATBELT LAW



"THE MORE NUMEROUS THE LAWS, THE MORE CORAUPT THE STATE." - ROMAN HISTORIAN TACITUS.

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Attachment 2

only identify a portion of the economic benefits resulting from an automatic occupant protection rule, it is interesting to note some breakeven points for the cost related to automatic belts using low and high effectiveness estimates. The breakeven point occurs when lifetime cost (retail price increases and additional fuel cost) equal lifetime insurance premium reductions. At the high effectiveness level, the breakeven point occurs at the 32 percent usage level. At the low effectiveness level, the breakeven point occurs at the 44 percent usage level. Thus, by increasing current usage by approximately 20–30 percent, automatic belts will pay for themselves simply based on estimated insurance premium reductions. Inclusion of non-insurance benefits would lower these breakeven points, perhaps significantly.

Although airbag systems do not attain similar breakeven points based just on insurance premium reductions, it is interesting to note that a significant portion of airbag costs would be paid for just by insurance premium reductions. The estimated lifetime cost of a full front airbag system is $364, including increased fuel cost; the lifetime insurance premium reductions are estimated to range from $76 to $158 assuming 12.5 percent usage of the lap belt.

By issuing a performance standard rather than mandating the specific use of one device such as airbags or prohibiting the use of specific devices such as nondetachable belts, the Department believes that it will provide sufficient latitude for industry to develop the most effective systems. The ability to offer alternative devices should enable the manufacturers to overcome any concerns about public acceptability by permitting some public choice. If there is concern, for example, about the comfort or convenience of automatic belts, the manufacturers have the option of providing airbags or passive interiors. For those who remain concerned about the cost of airbags, automatic belts provide an alternative. This approach also has the advantage of not discouraging the development of other technologies. For example, the development of passive interiors can be continued and offered as an alternative to those who have objections to automatic belts or airbags.

Because one manufacturer has already begun to offer airbags and three others have indicated plans to do so, the Department expects that airbags will be offered on some cars in response to this requirement. Moreover, the continued development of lower cost airbag systems, such as the system being developed by Breed, may result in their use in even larger numbers of automobiles. By encouraging the use of such alternatives to automatic belts through this rulemaking, the Department expects that more effective and less expensive technologies will be developed. In fact, the Department believes it is in the public interest to encourage the development of technologies other than automatic belts to reduce the chance that the purchaser of an automobile will have no other option. *See* 103 S. Ct. at 2864. Thus, the rule is designed to encourage non-belt technologies during the phase-in period. The Department's expectation is that manufacturers who take advantage of this "weighting" will continue to offer such non-belt systems should the standard be fully reinstated. It also expects that improvements in automatic belt systems will be developed as more manufacturers gain actual experience with them.

Center Seat

The Department has also decided to exempt the center seat of cars from the requirement for automatic occupant protection. This has been done for a number of reasons described in more detail earlier in this preamble. First, limitations in current automatic belt technology would probably result in the elimination of the center seat for most cars if it were required to be protected. Balancing the loss of vehicle utility, and the numerous effects that this could have, with the limited number of occupants of the center seat and, thus, the limited benefits to be gained from protecting it, warrant exempting its coverage. It should be noted that different protection by seating position already exists as rear seat requirements differ from front seat requirements; the center front seat itself is already exempt from the requirement to provide shoulder belts. Thus, there is ample precedent for this action.

Mandatory Use Law Alternative

The rule requires the rescission of the automatic occupant protection requirement if two-thirds of the population of the United States are residents of states that have passed MULs meeting the requirements set forth in the regulation. The requirement would be rescinded as soon as a determination could be made that two-thirds of the population are covered by such statutes. However, if two-thirds of the population are not covered by MULs that take effect by September 1, 1989, the manufacturers will be required to install automatic protection systems in all automobiles manufactured after September 1, 1989. As discussed in an earlier section, use of the three-point seatbelt (which our analysis indicates is exceeded in its effectiveness range only by an airbag with a three-point belt) is the quickest, least expensive way by far to significantly reduce fatalities and injuries. "We start with the accepted ground that if used, seatbelts unquestionably would save many thousands of lives and would prevent tens of thousands of crippling injuries." 103 S. Ct. at 2871. As set out in detail earlier in the preamble, coverage of a large percentage of the American people by seatbelt laws that are enforced would largely negate the incremental increase in safety to be expected from an automatic protection requirement.

The rule also contains minimum criteria for each state's MUL to be included in the determination by the Secretary that imposition of an automatic protection standard is no longer required. Those minimum criteria are as follows:

(1) A requirement that each outboard front seat occupant of a passenger car, which was required by Federal regulation, when manufactured, to be equipped with front seat occupant restraints, have those devices properly fastened about their bodies at all times while the vehicle is in forward motion.

(2) A prohibition of waivers from the mandatory use of seatbelts, except for medical reasons;

(3) An enforcement program that complies with the following minimum requirements:

(a) *Penalties* A penalty of $25 (which may include court costs) or more for each violation of the MUL, with a separate penalty being imposed for each person violating the law.

(b) *Civil litigation penalties.* The violation of the MUL by any person when involved in an accident may be used in mitigating any damages sought by that person in any subsequent litigation to recover damages for injuries resulting from the accident. This requirement is satisfied if there is a rule of law in the State permitting such mitigation.

(c) *The establishment of prevention and education programs to encourage compliance with the MUL.*

(d) *The establishment of an MUL evaluation program by the state.* Each state that enacts an MUL will be required to include information on its experiences with those laws in the annual evaluation report on its Highway Safety Plan (HSP) that it submits to NHTSA and FHWA under 23 U.S.C. 402.

(4) An effective date of not later than September 1, 1989.

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deaths of vehicle occupants, and the severity of injuries, by specifying vehicle crashworthiness requirements in terms of forces and accelerations measured on anthropomorphic dummies in test crashes, and by specifying equipment requirements for active and passive restraint systems.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. In addition, S9., *Pressure vessels and explosive devices,* applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash.

S4. *General requirements.*

S4.1 *Passenger cars.*

S4.1.1 *Passenger cars manufactured from January 1, 1972, to August 31, 1973.* Each passenger car manufactured from January 1, 1972, to August 31, 1973, inclusive, shall meet the requirements of S4.1.1.1, S4.1.1.2, or S4.1.1.3. A protection system that meets the requirements of S4.1.1.1, or S4.1.1.2 may be installed at one or more designated seating positions of a vehicle that otherwise meets the requirements of S4.1.1.3.

S4.1.1.1 *First optio· complete passive protection systen.* The vehicle shall meet the crash protection requirements of S5. by means that require no action by vehicle occupants.

S4.1.1.2 *Second option—lap belt protection system with belt warning.* The vehicle shall—

(a) At each designated seating position have a Type 1 seatbelt assembly or a Type 2 seatbelt assembly with a detachable upper torso portion that conforms to S7.1 and S7.2 of this standard.

(b) At each front outboard designated seating position, have a seat belt warning system that conforms to S7.3; and

(c) Meet the frontal crash protection requirements of S5.1, in a perpendicular impact, with respect to anthropomorphic test devices in each front outboard designated seating position restrained only by Type 1 seat belt assemblies.

S4.1.1.3 *Third option—lap and shoulder belt protection system with belt warning.*

S4.1.1.3.1 Except for convertibles and open-body vehicles, the vehicle shall—

(a) At each front outboard designated seating position have a Type 2 seatbelt assembly that conforms to § 571.209 and S7.1 and S7.2 of this standard, with either an integral or detachable upper torso portion, and a seatbelt warning system that conforms to S7.3;

(b) At each designated seating position other than the front outboard positions, have a Type 1 or Type 2 seat belt assembly that conforms to § 571.209 and to S7.1 and S7.2 of this standard; and

(c) When it perpendicularly impacts a fixed collision barrier, while moving longitudinally forward at any speed up to and including 30 m.p.h., under the test conditions of S8.1 with anthropomorphic test devices at each front outboard position restrained by Type 2 seatbelt assemblies, experience no complete separation of any load-bearing element of a seatbelt assembly or anchorage.

S4.1.1.3.2 Convertibles and open-body type vehicles shall at each designated seating position have a Type 1 or Type 2 seatbelt assembly that conforms to § 571.209 and to S7.1 and S7.2 of this standard, and at each front outboard designated seating position have a seatbelt warning system that conforms to S7.3.

S4.1.2 *Passenger cars manufactured on or after September 1, 1973, and before September 1, 1986.* Each passenger car manufactured on or after September 1, 1973, and after September 1, 1986, shall meet the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3. A protection system that meets the requirements of S4.1.2.1 or S4.1.2.2 may be installed at one or more designated seating positions of a vehicle that otherwise meets the requirements of S4.1.2.3.

S4.1.2.1 *First option—frontal/angular automatic protection system. The vehicle shall:*

(a) At each front outboard designated seating position meet the frontal crash protection requirements of S5.1

by means that require no action by vehicle occupants;

(b) At the front center designated seating position and at each rear designated seating position have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and to S7.1 and S7.2; and

(c) *Either.* (1) Meet the lateral crash protection requirements of S5.2 and the rollover crash protection requirements of S5.3 by means that require no action by vehicle occupants; or

(2) At each front outboard designated seating position have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3, and that meets the requirements of S5.1 with front test dummies as required by S5.1, restrained by the Type 1 or Type 2 seat belt assembly (or the pelvic portion of any Type 2 seat belt assembly which has a detachable upper torso belt) in addition to the means that require no action by the vehicle occupant.

S4.1.2.2 *Second option—head-on automatic protection system.* The vehicle shall—

(a) At each designated seating position have a Type 1 seat belt assembly or Type 2 seat belt assembly with a detachable upper torso portion that conforms to S7.1 and S7.2 of this standard.

(b) At each front outbord designated seating position, meet the frontal crash protecton requirements of S5.1, in a perpendicular impact, by means that require no action by vehicle occupants;

(c) At each front outboard designated seating position, meet the frontal crash protection requirements of S5.1, in a perpendicular impact, with a test device restrained by a Type 1 seat belt assembly; and

(d) At each front outboard designated seating position, have a seat belt warning system that conforms to S7.3.

S4.1.2.3 *Third option—lap and shoulder belt protection system with belt warning.*

S4.1.2.3.1 Except for convertibles and open-body vehicles, the vehicle shall—

(a) At each front outboard designated seating position have a seat belt assembly that conforms to S7.1 and S7.2

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice No. 36]

Federal Motor Vehicle Safety Standard; Occupant Crash Protection

AGENCY: Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This Rule requires the installation of automatic restraints in all new cars beginning with model year 1990 (September 1, 1989) unless, prior to that time, state mandatory belt usage laws are enacted that cover at least two-thirds of the U.S. population. The requirement would be phased in by an increasing percentage of production over a three-year period beginning with model year 1987 (September 1, 1986). To further encourage the installation of advanced technology, the rule would treat cars equipped with such technology other than automatic belts as equivalent to 1.5 vehicles during the phase-in.

DATES: The amendments made by this rule to the text of the Code of Federal Regulations are effective August 16, 1984.

The principal compliance dates for the rule, unless two-thirds of the population are covered by mandatory use laws, are:

September 1, 1986—for phase-in requirement.

September 1, 1989—for full implementation requirement.

In addition: February 1, 1985—for center seating position exemption from automatic restraint provisions.

ADDRESS: Petitions for reconsideration should refer to the docket and notice numbers set forth above and be submitted not later than August 16, 1984 to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-4723).

SUPPLEMENTARY INFORMATION:

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I. Summary of the Final Rule

After a thorough review of the issue of automobile occupant protection, including the long regulatory history of the matter; the comments on the Notice of Proposed Rulemaking (NPRM) and the Supplemental Notice of Proposed Rulemaking (SNPRM); and extensive studies, analyses, and data on the subject; and the court decisions that have resulted from law suits over the different rulemaking actions, the Department of Transportation has reached a final decision that it believes will offer the best method of fulfilling the objectives and purpose of the governing statute, the National Traffic and Motor Vehicle Safety Act. As part of this decision, the Department has reached three basic conclusions:

- Effectively enforced state mandatory seatbelt use laws (MULs) will provide the greatest safety benefits most quickly of any of the alternatives, with almost no additional cost.

- Automatic occupant restraints provide demonstrable safety benefits,

and, unless a sufficient number of MULs are enacted, they must be required for the most frequently used seats in passenger automobiles.

• Automatic occupant protection systems that do not totally rely upon belts, such as airbags or passive interiors, offer significant additional potential for preventing fatalities and injuries, at least in part because the American public is likely to find them less intrusive; their development and availability should be encouraged through appropriate incentives.

As a result of these conclusions, the Department has decided to require automatic occupant protection in all passenger automobiles based on a phased-in schedule beginning on September 1, 1986, with full implementation being required by September 1, 1989, unless, before April 1, 1989, two-thirds of the population of the United States are covered by MULs meeting specified conditions. More specifically, the rule would require the following:

Passenger cars manufactured for sale in the United States after September 1, 1986, will have to have automatic occupant restraints based on the following phase-in schedule:

• Ten percent of all automobiles manufactured after September 1, 1986.

• Twenty-five percent of all automobiles manufactured after September 1, 1987.

• Forty percent of all automobiles manufactured after September 1, 1988.

• One-hundred percent of all automobiles manufactured after September 1, 1989.

• The requirement for automatic occupant restraints will be rescinded if MULs meeting specified conditions are passed by a sufficient number of states before April 1, 1989 to cover two-thirds of the population of the United States.

• During the phase-in period, each passenger automobile that is manufactured with a system that provides automatic protection to the driver without automatic belts will be given an extra credit equal to one-half of an automobile toward meeting the percentage requirement.

• The front center seat of passenger cars will be exempt from the requirement for automatic occupant protection.

• Rear seats are not covered by the requirements for automatic protection.

II. Background

Introduction

The Supreme Court Decision

On October 23, 1981, the National Highway Traffic Safety Administration (NHTSA) issued an order pursuant to section 103 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, amending Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208; "FMVSS 208"), by rescinding the provisions that would have required the front seating positions in all new cars to be equipped with automatic restraints (46 FR 53419; October 29, 1981).

On June 24, 1983, the Supreme Court held that NHTSA's rescission of the automatic restraint requirements was arbitrary and capricious. *Motor Vehicle Manufacturer's Association* v. *State Farm Mutual Automobile Insurance Co.*, 103 S.Ct. 2856. The agency had rescinded because it was unable to find that more than minimal safety benefits would result from the manufacturers' plans to comply with the requirement through the installation of automatic belts. In particular, the Court found the agency had failed to present an adequate basis and explanation for rescinding the requirement. The Court also stated that the agency must either consider the matter further or adhere to or amend the standard along the lines that its "reasoned analysis" and explanation supports.

By a five to four vote, the Court held that the agency had been too quick in dismissing the benefits of detachable automatic belts. The Court stated that the agency's explanation of its rescission was not sufficient to enable the Court to conclude that the agency's action was the product of reasoned decision making. The Court found that the agency had not taken account of the critical difference between detachable automatic belts and current manual belts. "A detached passive belt does require an affirmative act to reconnect it, but—unlike a manual seatbelt—the passive belt, once reattached, will continue to function automatically unless again disconnected."

The Court unanimously found that, even if the agency was correct that detachable automatic belts woud yield few benefits, that fact alone would not justify rescission. Instead, it would justify only a modification of the requirement to prohibit compliance by means of that type of automatic restraint. The Court also unanimously held that having concluded that detachable automatic belts would not result in significiantly increased usage, NHTSA should have considered requiring that automatic belts be continuous (i.e., nondetachable) instead of detachable, or that FMVSS 208 be modified to require the installation of airbags.

The 1983 Suspension

On September 1, 1983, the Department suspended the automatic restraint requirement for one year to ensure that sufficient time was available for considering the issues raised by the Supreme Court's decision (48 FR 39908).

The NPRM

On October 14, 1983, the Department issued a notice of proposed rulemaking (NPRM) (48 FR 48622) asking for comment on a range of alternatives, including the following:

Retain the automatic occupant protection requirements of FMVSS 208. Under this alternative, the substantive automatic occupant protection requirements of FMVSS 208 would be retained, but a new compliance date would have to be established. Compliance could be by any type of automatic restraint, including detachable belts.

Amend the automatic occupant protection requirements of FMVSS 208. Numerous alternatives were proposed. For example, an amendment could require compliance by airbags only or by airbags or nondetachable automatic belts only. Subalternatives included automatic protection for the full front seat, the outboard seating positions, or the driver only. An additional alternative would have required that cars be manufactured with an airbag retrofit capability.

Rescind the automatic occupant protection requirements of FMVSS 208. The Department could again rescind the requirements if its analysis led it to that conclusion. The Supreme Court decision does not bar rescission after the Department "consider[s] the matter further."

The NPRM also proposed other actions that could be taken in conjunction with, or as a supplement to, the above alternatives. They were as follows:

Conduct a demonstration program. Such a program could be along the voluntary lines suggested by Secretary Coleman in 1976 and would be accompanied by a temporary suspension of FMVSS 208's automatic occupant protection requirements. It would be designed to acquaint the public with the automatic restraint technologies so as to reduce the possibility of adverse public reaction and to obtain additional data to refine effectiveness estimates.

Seek mandatory State safety belt usage laws. The Department could seek Federal legislation that would either establish a seatbelt use requirement or

of this standard, and a seat belt warning system that conforms to S7.3. The belt assembly shall be either a Type 2 seat belt assembly with a nondetachable shoulder belt that conforms to Standard No. 209 (§ 571.209), or a Type 1 seat belt assembly such that with a test device restrained by the assembly the vehicle meets the frontal crash protection requirements of S5.1 in a perpendicular impact.

(b) At any center front designated seating position, have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 (§ 571.209) and to S7.1 and S7.2 of this standard, and a seat belt warning system that conforms to S7.3; and

(c) At each other designated seating position, have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 (§ 571.209) and S7.1 and S7.2 of this standard.

S4.1.2.3.2 Convertibles and openbody type vehicles shall at each designated seating position have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 (§ 571.209) and to S7.1 and S7.2 of this standard, and at each front designated seating position have a seat belt warning system that conforms to S7.3.

S4.1.3 *Passenger cars manufactured on or after September 1, 1986, and before September 1, 1989.*

S4.1.3.1 *Passenger cars manufactured on or after September 1, 1986, and before September 1, 1987.*

S4.1.3.1.1 Subject to S4.1.3.1.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1986, and before September 1, 1987, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3.

S4.1.3.1.2 Subject to S4.1.5, an amount of the cars specified in S4.1.3.1.1 equal to not less than 10 percent of the average annual production of passenger cars manufactured on or after September 1, 1983, and before September 1, 1986, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.2 *Passenger cars manufactured on or after September 1, 1987, and before September 1, 1988.*

S4.1.3.2.1 Subject to S4.1.3.2.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1987, and before September 1, 1988, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3.

S4.1.3.2.2 Subject to S4.1.5, an amount of the cars specified in S4.1.3.2.1 equal to not less than 25 percent of the average annual production of passenger cars manufactured on or after September 1, 1984, and before September 1, 1987, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.3 *Passenger cars manufactured on or after September 1, 1988, and before September 1, 1989.*

S4.1.3.3.1 Subject to S4.1.3.3.2 and S4.1.3.4, each passenger car manufactured on or after September 1, 1988, and before September 1, 1989, shall comply with the requirements of S4.1.2.1, S4.1.2.2 or S4.1.2.3.

S4.1.3.3.2 Subject to S4.1.5, an amount of the cars specified in S4.1.3.3.1 equal to not less than 40 percent of the average annual production of passenger cars manufactured on or after September 1, 1985, and before September 1, 1988, by each manufacturer, shall comply with the requirements of S4.1.2.1.

S4.1.3.4 For the purposes of calculating the numbers of cars manufactured under S4.1.3.1.2, S4.1.3.2.2 or S4.1.3.3.2 to comply with S4.1.2.1, each car whose driver's seating position will comply with these requirements by means other than any type of seat belt is counted as 1.5 vehicles.

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.* Except as provided in S4.1.5, each passenger car manufactured on or after September 1, 1989, shall comply with the requirements of S4.1.2.1.

S4.1.5 *Mandatory seatbelt use laws.*

S4.1.5.1 If the Secretary of Transportation determines, by not later than April 1, 1989, that state mandatory safety belt usage laws have been enacted that meet the criteria specified in S4.1.5.2 and that are applicable to not less than two-thirds of the total population of the 50 states and the District of Columbia (based on the most recent Estimates of the Resident Population of States, by Age, Current Population Reports, Series P-25, Bureau of the Census), each passenger car manufactured under S4.1.3 or S4.1.4 on or after the date of that determination shall comply with the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3.

S4.1.5.2 The minimum criteria for state mandatory safety belt usage laws are:

(a) Require that each front seat occupant of a passenger car equipped with safety belts under Standard No. 208 has a safety belt properly fastened about his or her body at all times when the vehicle is in forward motion.

(b) If waivers from the safety belt usage requirement are to be provided, permit them for medical reasons only.

(c) Provide for the following enforcement measures:

(1) A penalty of not less than $25.00 (which may include court costs) for each occupant of a car who violates the belt usage requirement.

(2) A provision specifying that the violation of the belt usage requirement may be used to mitigate damages with respect to any person who is involved in a passenger car accident while violating the belt usage requirement and who seeks in any subsequent litigation to recover damages for injuries resulting from the accident. This requirement is satisfied if there is a rule of law in the State permitting such mitigation.

(3) A program to encourage compliance with the belt usage requirement.

(d) An effective date of not later than September 1, 1989.

S4.2 *Trucks and multipurpose passenger vehicles with GVWR of 10,000 pounds or less.*

S4.2.1 *Trucks and multipurpose passenger vehicles, with GVWR of 10,000 pounds or less, manufactured from January 1, 1972 to December 31, 1975.* Each truck and multipurpose passenger vehicle with a gross vehicle weight rating of 10,000 pounds or less, manufactured from January 1, 1972, to December 31, 1975, inclusive, shall meet the requirements of S4.2.1.1 or S4.2.1.2, or at the option of the manufacturer, the requirements of S4.2.2. A protection system that meets the requirement of S4.2.1.1, may be installed at one or more designated seating posi-

33-182 O—84—23

Session of 1985

HOUSE BILL No. 2248

By Representatives Guldner, Eckert, Harper, Louis, R.D. Miller, Moomaw, K. Ott, Roenbaugh and Smith

2-8

AN ACT concerning owners of registered vehicles which unlawfully pass school buses; penalties.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) When a school bus is properly stopped to receive or discharge school children and the bus is passed by any motor vehicle in violation of K.S.A. 8-1556 and amendments thereto, the driver of the school bus shall complete a form provided by the state division of vehicles reporting the license plate information on the motor vehicle, the date, time and other pertinent information. Such bus driver shall sign the report and deliver it to the ~~division of vehicles~~ county attorney or district attorney of the county in which the occurrence happened.

~~(b) When the division of vehicles receives a report under subsection (a), it shall mail a severely worded warning letter to the registered owner of the motor vehicle advising that if a second such report is received by the division of vehicles, the registered owner will be prosecuted under this statute. The warning shall state the maximum fine or imprisonment provided by this act.~~

(c) Permitting a vehicle registered in a person's name to pass a school bus in violation of K.S.A. 8-1556 and amendments thereto is a misdemeanor. Any person who violates this subsection (c) shall be fined ~~not to exceed $50 or confined in the county jail for not more than 10 days or both such fine and imprisonment~~ $30.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

information descriptive of the motor vehicle,

(b) "Person" means every natural person, firm, association, partnership or corporation.

, except it shall be a defense to charge under this section that for the incident charged another person is being prosecuted for violation of K.S.A. 8-1556 and amendments thereto

Subcommittee:

Representative Moomaw
Representative Snobarger
Representative Erne

Attachment 4

Feb. 4
2/28/85

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N -- Statehouse

Phone 296-3181

February 15, 1985

TO: REPRESENTATIVE DENNIS SPANIOL **Office No.** 280-W

RE: REDUCING THE GASOHOL SUBSIDY

This memorandum is in response to your request for estimates of the fiscal effect of reducing the Kansas gasohol subsidy (the difference between the motor fuel tax on gasoline and the rate on gasohol) by $.01, $.02, $.03, and $.04. The amounts shown below represent the estimated increase in motor fuel taxes from each option. These estimates are for FY 1986 on an annualized basis, that is, without regard for any potential inventory tax or any delay in receiving taxes at the higher rate.

After refunds, all collections of taxes on motor fuels are distributed 59.5 percent to the State Freeway Fund and 40.5 percent to the Special City and County Highway Fund, effective January 1, 1984. Revenues distributed to the State Freeway Fund subsequently are partly distributed to the State Highway Fund. The portion of the added revenue that would accrue to local units is also shown below.

Decrease in Subsidy	Annualized Increase in Receipts	Special City and County Highway Fund
$ .01	$ 3.7 million	$ 1.5 million
.02	8.4 million	3.4 million
.03	12.6 million	5.1 million
.04	15.1 million	6.1 million

I hope this information is useful to you. If you have further questions please contact me.

Thomas A. Severn
Principal Analyst

TAS/db

2/28/85
Attachment 5