Approved 2-26-85
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by Sen. Bill Morris Chairperson at

9:00 a.m./~~p.m.~~ on February 22, 1985 in room 254-E of the Capitol.

All members were present except:
Sen. Doyen and Sen. Hoferer were excused.

Committee staff present:
Fred Carman, Revisor
Hank Avila, Research Department
Louise Cunningham, Secretary

Conferees appearing before the committee:
Richard Schlegel, ABATE, Manhattan
Jim Edwards, Topeka, KCCI
Sgt. Bill Jacobs, Kansas Highway Patrol
Rep. J. Branson
Pat Barnes, Kansas Motor Car Dealers Association
Paul Fleenor, Kansas Farm Bureau
Mary Turkington, Kansas Motor Carriers Association
Ron Smith, Kansas Bar Association

On a motion from Sen. Thiessen and a second from Sen. Vidricksen the Minutes of February 19, 1985 were approved. Motion carried.

CONSIDERATION OF BILLS PREVIOUSLY HEARD

S.B. 155 - County Treasurers' Bill.

Sen. Walker reported on the recommendations of the sub-committee. He said there were two areas of concern. One was the date for turning over funds to the general fund. They felt there should be a specific date and they agreed June 1 was appropriate. The other area of concern was that urban areas would end up with excess funds but smaller counties needed the extra funds. The extra funds would go into improving service in the larger counties and to the general fund. It was the recommendation of the sub-committee to pass S.B. 155.

A motion was made by Sen. Francisco and seconded by Sen. Walker to recommend S.B. 155 favorable for passage. Motion carried.

S.B. 151 - Speed limit bill.

A motion was made by Sen. Norvell and seconded by Sen. Frey to recommend S.B. 151 favorable for passage.

Sen. Walker thought the speed was excessive now for certain sections of Johnson and Wyandotte Counties. He thought some areas should be exempt from higher speed limits.

Ed DeSoignie, KDOT, said the Secretary of Transportation could authorize lower speed limits by resolution,and approval by the Governor.

Motion carried.

S.B. 209 - Concerning speed limits.

A motion was made by Sen. Francisco and seconded by Sen. Thiessen to report S.B. 209 adversely. Motion carried.

CONTINUED HEARING ON S.B. 144 - Seat Belt Law

Richard Schlegel said polls had indicated the people did not want a mandatory seat belt law. This should be a choice of the people and if they are truly represented this will not be mandatory. Of the four states that

have voted for the mandatory seat belts, three do not comply with the federal requirements.

PROPONENTS

Jim Edwards, KCCI, said the Chamber is generally opposed to legislation which affects freedom of choice, but in this case it would have a significant impact on the health, welfare and economics of the citizens of the state of Kansas. He supported the bill. A copy of his statement is attached. (Attachment 1).

Sgt. Bill Jacobs, Highway Patrol, said they were in favor of S.B. 144 but there would be problems with enforcement. A copy of his statement is attached. (Attachment 2).

Rep. Jessie Branson spoke in favor of the bill. She also had graphic charts which showed the results in fatal accidents comparing those wearing seat belts and those not wearing seat belts. A copy of her statement is attached. (Attachment 3). She also had a proposed amendment which would require the driver of the vehicle to make certain that all occupants of the front seat were buckled in. A copy of this amendment is attached. (Attachment 4).

Pat Barnes, Kansas Motor Car Dealers Association, also spoke in support of the bill and said another factor to be considered was the costs involved with passive restraints. These are not necessarily air bags. Seat belts are a fraction of the cost of other restraints. Also to be considered was the fact that an air bag cannot be tested. There would be increased liability suits with various people installing these restraints, if they did not function. A copy of his statement is attached. (Attachment 5).

Paul Fleenor, Kansas Farm Bureau, said they deplored the blackmail tactics of the federal government to bring about seat belt use but because this use would save lives, they did support the bill. A copy of his statement is attached. (Attachment 6).

Mary Turkington, Kansas Motor Carriers Association, said they supported this legislation and having a law would afford discipline to young drivers that might well save their lives. A copy of her statement is attached. (Attachment 7).

Ron Smith, Legislative Counsel, Kansas Bar Association, said they support the concept but oppose the Subsection 4(b) mitigation of damages. He said there was no public benefit to this but it is a private benefit solely to the defendant and the defendant's insurance company. A copy of his statement is attached. (Attachment 8). He also called attention to a Kansas Court of Appeals case, Taplin v. Clark, in which the defendant tried to introduce a "seat belt defense" and thereby mitigate damages. A copy of this case is attached. (Attachment 9).

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION & UTILITIES COMMITTEE

Date 2-22 Place 254-E Time 900

GUEST LIST

PLEASE PRINT

NAME	ADDRESS (City)	ORGANIZATION
Richard Harmon	Topeka	KS Prop. ; Casualty Co
BILL JACOBS	TOPEKA	KANSAS HIGHWAY PATROL
OSCAR LIND	TOPEKA	
Jim Edwards	"	KCCI
PAT BARNES	"	KS. Motor Car Dealers Assn.
Ron Smith	"	KS Pet Assoc
RICHARD Schlegel	MANHATTAN, KS	ABATE of KS, INC
JIM SUCCINS	TOPEKA	KS. MOTOR CAR DEALERS ASSN.

SENATE TRANSPORTATION & UTILITIES COMMITTEE

Date 2-22 Place 254-E Time 9^00

GUEST LIST

PLEASE PRINT

NAME	ADDRESS (City)	ORGANIZATION
Bob Storey	Topeka	TS NOW
Tom Whitaker	Topeka	Ks Motor Carriers Assn
DAVID G TITTSWORTH	"	KDOT
ED DESOIGNIE	TOPEKA	KS. DEPT. OF TRANS.
Margie Thompson	Topeka	Kansas Motor Carriers Assn.
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Ken C Erickson	GARDEN CITY	—
Bill Sneed	Topeka	Ks. Assn. of Def. Counsel

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

SB 144

February 21, 1985

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

SENATE TRANSPORTATION COMMITTEE

Mr. Chairman and Members of the Committee:

I am Jim Edwards, Director of Public Affairs for the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to appear before you today to express our support of SB 144, a bill which would require the use of a seat belt by all front-seat passengers in an automobile.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses plus 215 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

ATT. (1)
2/22/85

Every year in the United States, approximately 50,000 persons are killed on our streets and highways. About 75% of those killed were either killed in, or as a result of being ejected from, a vehicle. In addressing this problem, the U.S. Department of Transportation issued a Standard which requires that any auto manufactured in the U.S. after September 1, 1989, be equipped with a passive restraint system for front seat passengers. However, should states representing 2/3 of the total U.S. population pass mandatory seat belt laws the U.S. Department of Transportation would accept this as an acceptable alternative to the passive restraint Standard.

While the Kansas Chamber of Commerce and Industry is generally opposed to: 1) Federal mandates which force actions by state legislatures, and 2) state laws which affect individual freedom of choice, the passage of SB 144 would have a significant impact on the health, welfare, and economics of the citizens of Kansas. An example of the significant impact that can be attributed to seat belt legislation would be Ontario, Canada. After enactment of legislation in 1976, this Canadian province saw the number of hospitalized accident victims decrease by 22% and the cost of treating highway accident victims decrease by 30%. In addition, the province itself saved $1 million in hospital costs during the first 3 months the law was in force.

With this in mind, KCCI urges you to support this piece of legislation. After all, the U.S. public has already paid more than $14 million for seat belts in vehicles on the road today. Using them will cost nothing more.

I appreciate the opportunity to appear before you today and would be happy to answer questions you might have.

(2)

SUMMARY OF TESTIMONY

BEFORE THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

Senate Bill 144

Presented by the Kansas Highway Patrol
(Sergeant William A. Jacobs)

February 21, 1985

APPEARED IN SUPPORT

The Patrol appears in support of Senate Bill 144. Our support is based upon the safety aspect associated with the use of safety belts. National authorities in the field of highway safety have estimated that as many as 50% of the fatalities and injuries resulting from motor vehicle accidents where safety belts could have been used, would have been prevented by the use of the belt. It is very difficult to examine cases where traffic fatalities have occurred and definitely say that a belt would have prevented death, but it only stands to reason that if a person is restrained from being flung about the interior of a vehicle or out of a vehicle, chances of survival would be much greater.

The Patrol would however, take this opportunity to point out a matter of concern to us. That matter pertains to the enforcement of a law of this type. We feel that a law of this nature would be very difficult to enforce because it is a violation that is not readily seen in plain view. If a person drives too fast or drives past a stop sign without stopping, these are violations, as most violations of traffic laws, that are easily detected by some sort of traffic enforcement device or the naked eye. The non-use of a safety belt is hidden from view inside of a vehicle and other violations are not involved to constitute probable cause for stopping a vehicle such as you would have in a case involving a drinking driver.

Difficulties could arise in the fact that some older vehicles had lap belts only or a lap belt separate from the shoulder harness and only the lap belt is worn. Another common example would be if an officer stops a vehicle, approaches the driver and observes that the belt is not fastened

ATT. (2)
2/22/85

brings this to the attention of the driver and the driver says "while you were getting out of your patrol car, I took my belt off so I could get my driver's license out of my wallet because I knew you would want to see it." That statement would be difficult to refute.

These examples are not intended to make light of our support for safety measures such as those provided by laws of this nature, but only to make you aware of our concerns and problems within the enforcement area of those provisions.

We respectfully ask that you consider these concerns in your deliberation concerning the provisions of this bill.

STATE OF KANSAS

JESSIE M. BRANSON
REPRESENTATIVE, FORTY-FOURTH DISTRICT
800 BROADVIEW DRIVE
LAWRENCE, KANSAS 66044
(913) 843-7171

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
PENSIONS, INVESTMENTS AND BENEFITS
PUBLIC HEALTH AND WELFARE

February 21, 1985

To: Senator Bill Morris, Chairman
and Members
Committee on Transportation and Utilities

From: Representative Jessie Branson

Re: Support of SB 144 - Mandatory Safety Belt Use

Thank you Mr. Chairman and Members of the Committee.

I have been before this committee a number of times during the past four years as sponsor of the Kansas Child Passenger Safety Act, which now requires that children under four years of age be protected by being secured in an approved safety seat while riding in the front seat of a passenger car.

Today I appear again as an advocate on health and safety, but this time to ask for favorable action on Senate Bill 144.

We know the following to be facts:

- - - Motor vehicle accidents is the leading cause of death in persons between 5 and 35 years of age.

- - - In Kansas alone, 510 people were killed in motor vehicle accidents during 1984, with thousands more injured.

- - - Overall safety belt usage averages 10% nationwide. However, a recent study conducted in Kansas shows that usage is less than 10% in our state.

ATT. 3
2/22/85

- - - 30 countries now have safety belt laws.

- - - To date, fatalities in those countries have been reduced on the average of approximately 25%, while usage varies from 40% in parts of Canada to 95% in Great Britian.

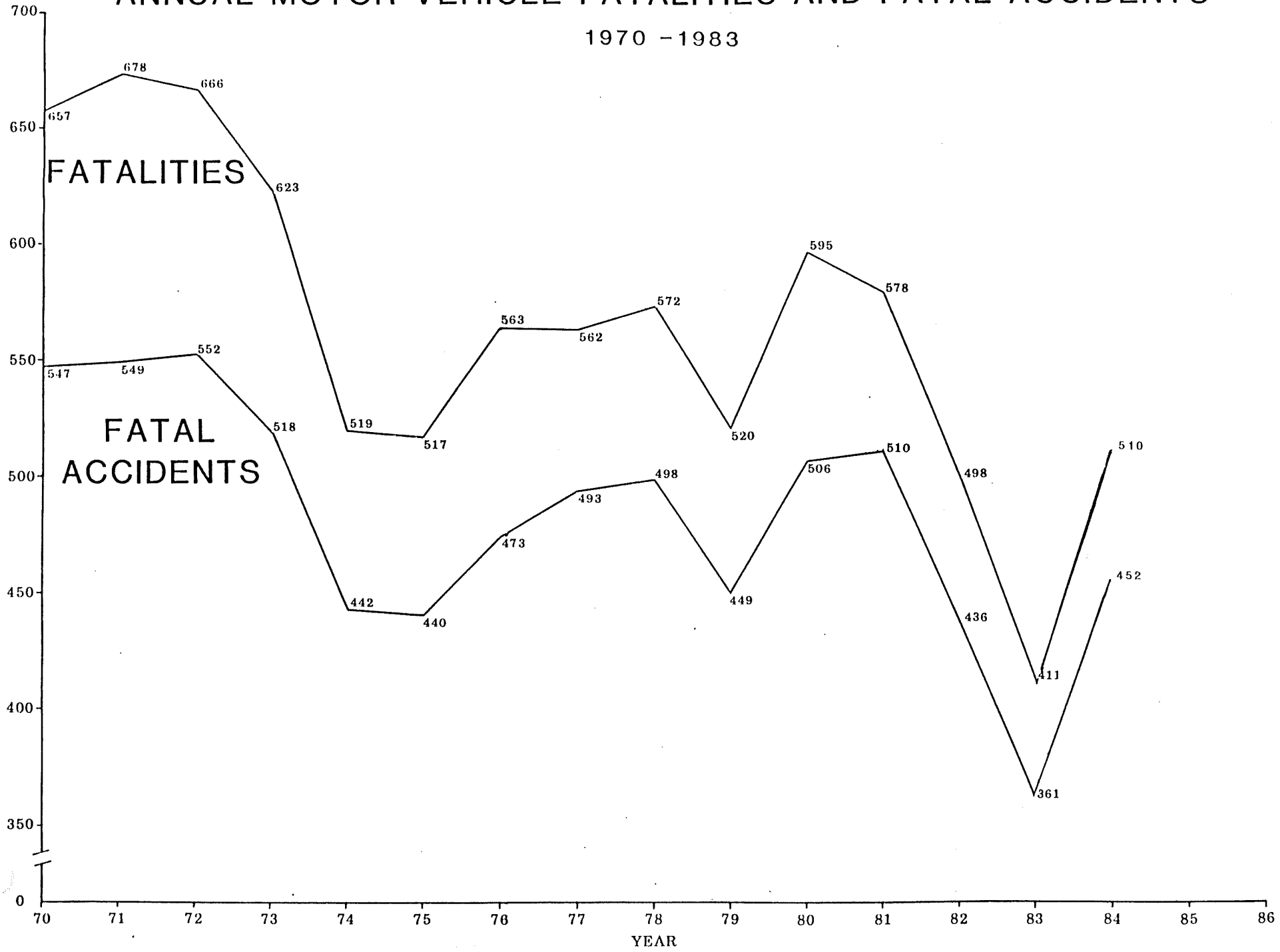
- - - Data coming out of these countries also shows that increased usage and reduction of fatalities is highly dependent upon enforcement of the law.

Mr Chairman, I would like to propose two amendments. (See balloon).

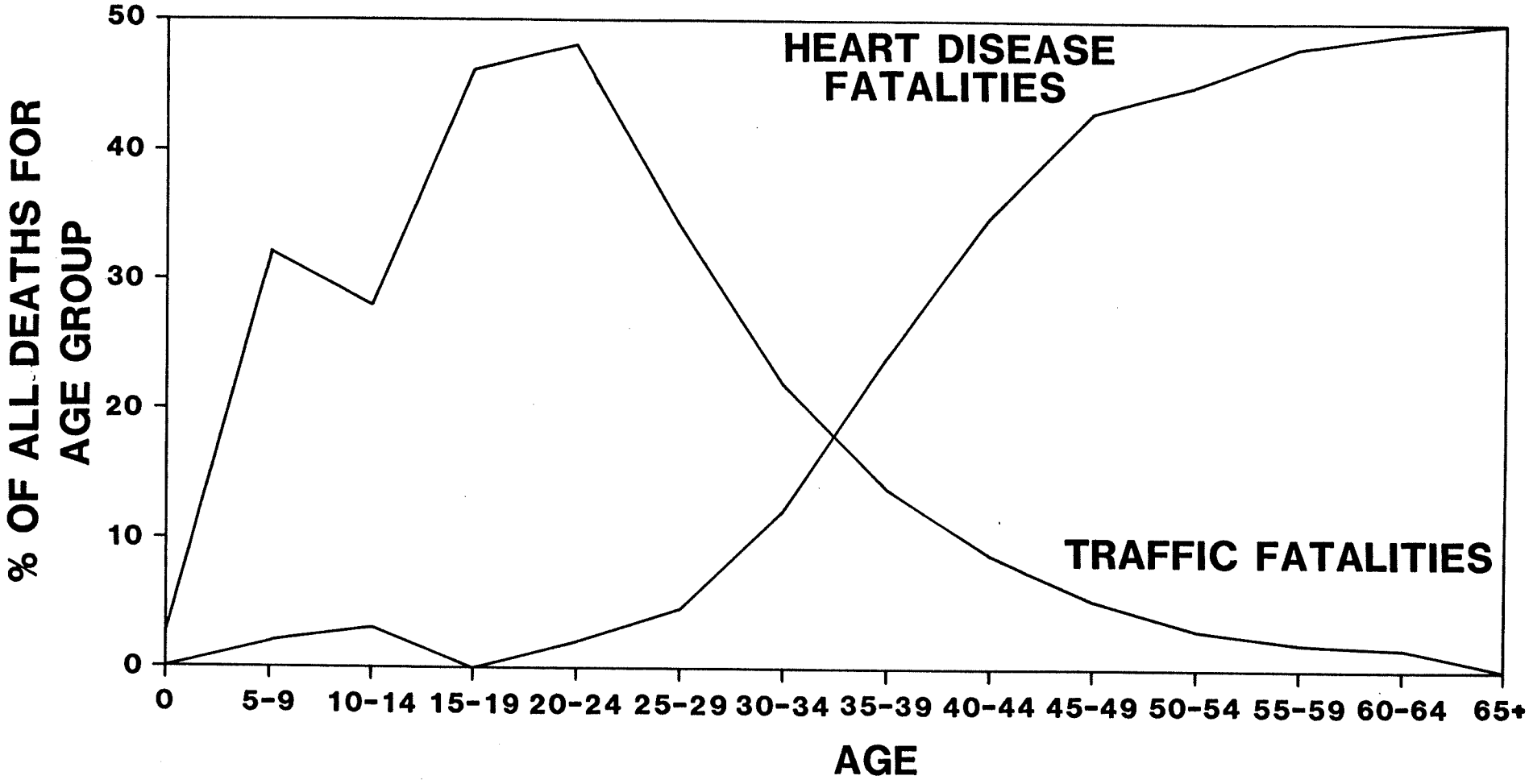
KANSAS DEPARTMENT OF TRANSPORTATION
ACCIDENT RESEARCH AND STATISTICS

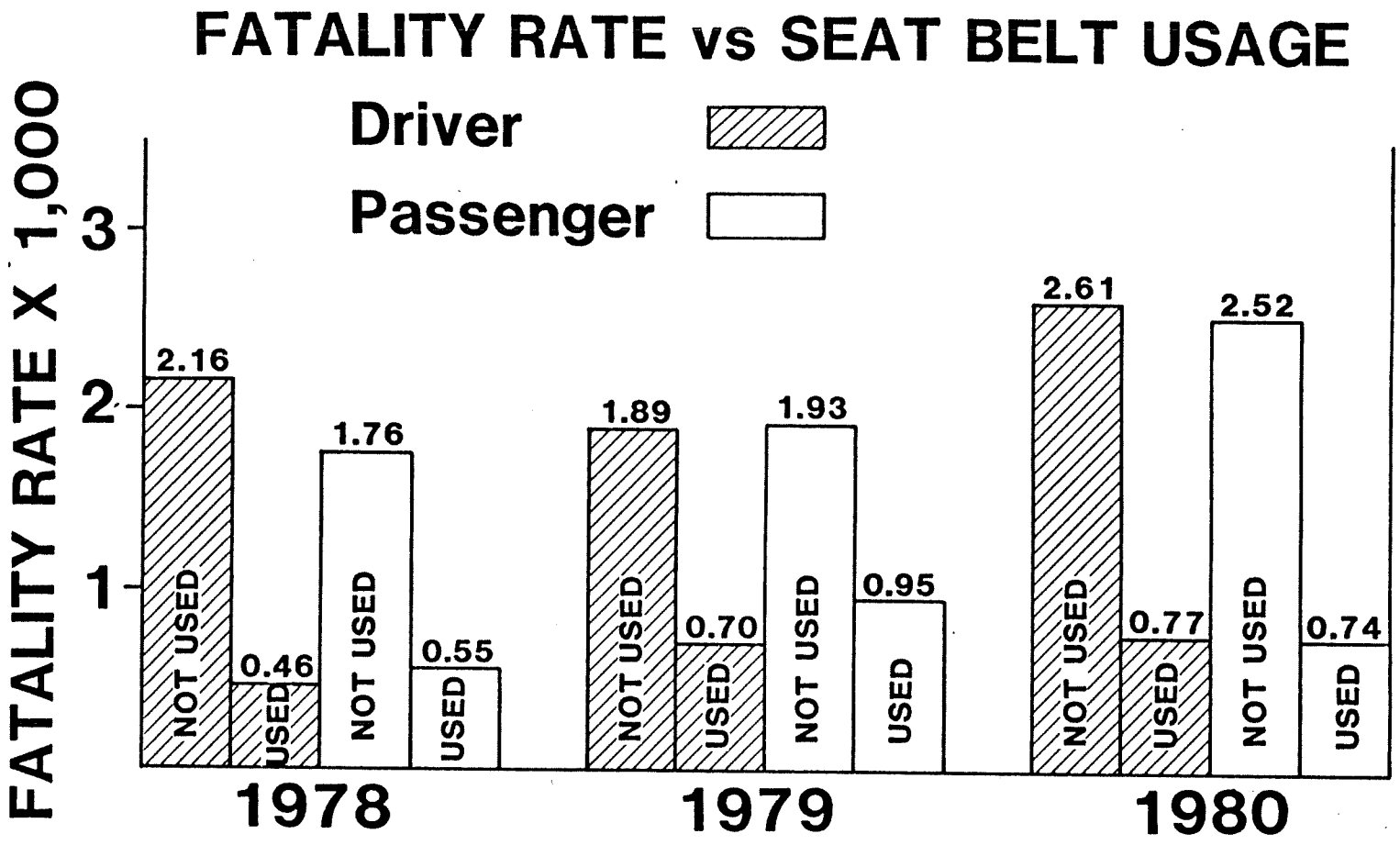
ANNUAL MOTOR VEHICLE FATALITIES AND FATAL ACCIDENTS

1970 -1983



AGE AND MAJOR CAUSES OF DEATH




FATALITY RATE vs SEAT BELT USAGE
Driver
Passenger
FATALITY RATE X 1,000
3
2
1
2.16
NOT USED
0.46
USED
1.76
NOT USED
0.55
USED
1.89
NOT USED
0.70
USED
1.93
NOT USED
0.95
USED
2.61
NOT USED
0.77
USED
2.52
NOT USED
0.74
USED
1978
1979
1980

(4)

ATT. (4)

Session of 1985

SENATE BILL No. 144

By Committee on Transportation and Utilities

2-1

AN ACT concerning motor vehicles; requirement for use of safety belts.

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

Section 1. This act may be cited as the safety belt use act.

Sec. 2. As used in this act, "passenger car" means a motor vehicle with motive power designed for carrying 10 passengers or fewer, but does not include a motorcycle, a trailer or a vehicle constructed either on a truck chassis or with special features for occasional off-road operation.

Sec. 3. (a) Except as provided in K.S.A. 8-1344 and 8-1345 and amendments thereto and in subsection (b), each front seat occupant of a passenger car manufactured with safety belts in compliance with federal motor vehicle safety standard no. 208 shall have a safety belt properly fastened about such person's body at all times when the vehicle is in motion.

When operating a vehicle, it is unlawful for the operator of the vehicle to fail to have a safety belt so fastened. It is also unlawful for such operator to permit any occupant of the front seat of such vehicle to fail to have a safety belt so fastened except that, if a parent or legal guardian of an occupant under 14 years of age of the front seat is in the vehicle and such occupant under 14 years of age does not have a safety belt so fastened, the parent or legal guardian is committing an unlawful act instead of the vehicle operator. When a vehicle is being operated it is unlawful for any occupant of the front seat who is 14 years of age or older to fail to have a safety belt so fastened.

(b) This section does not apply to an occupant of a passenger car who possesses a written statement from a licensed physician that such person is unable for medical reasons to wear a safety belt system.

(c) The secretary of transportation shall initiate an educational program designed to encourage compliance of restraint devices in reducing the risk of harm to their users as well as to others, and on the requirements and penalties specified in this act.

(d) The secretary shall evaluate the effectiveness of this act and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits under 23 U.S.C. 402.

Sec. 4. (a) Persons violating subsection (a) of section 3 shall

Att. 4
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than $25 and not more than $35

be fined not less ~~$25~~.

(b) Evidence of a violation of subsection (a) of section 3 shall be admissible in mitigation of damages with respect to any person who is involved in an accident while violating such subsection and who seeks in any subsequent litigation to recover damages for injuries resulting from the accident.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

BEFORE THE SENATE COMMITTEE ON TRANSPORTATION
AND UTILITIES REGARDING MANDATORY USE OF SEAT BELTS

Mr. Chairman and members of the Committee; we appreciate the time you have given us this morning to discuss with you the mandatory seat belt use law and our reasons as to why we think it should be enacted into law in the State of Kansas.

First of all, I will tell you that the Kansas Motor Car Dealers Association does support the enactment of the bill which you have before you this morning as we feel it is good public policy for a variety of reasons. I'm sure you have already heard and will continue to hear why this law should be enacted. Many will point out the multitude of statistics dealing with the number of lives that can be saved, not only in Kansas, but nationwide, as well as the number of severe injuries which could be prevented by the use of the already existing seat belt systems in all present-day vehicles. Other reasons given for passing seat belt laws may include the cost savings for medical insurers and individual citizens, as well as Local, State and Federal Governments in the form of Workers' Compensation, Disability income and the like.

KMCDA would like to take a little bit different approach this morning in the few minutes which we have to talk about the costs which the consumer could incur and, in fact, will incur if the Unites States Department of Transportation option is not met by the various states. You may be well aware that the option is 2/3 of the population of the U.S. must be covered by mandatory

seat belt use laws by 1987. The alternative to that would, of course, be the passive restraint requirements. We would first like to point out what a passive restraint is.

Passive restraints are not necessarily "air bags". We understand the common conception of a passive restraint as an air bag and, in fact, that is the most common type of passive restraint, but a passive restraint can be other things. Passive restraints can be automatic seat belts which some manufacturers have experimented with. Volkswagen, in particular, comes to mind in this field. It has a motorized belt and shoulder harness apparatus that automatically comes into place when a person enters the front seat of the vehicle and the door is shut. Passive restraints go past that to the point of General Motors' current development of what they call a "Friendly Interior", that being a basically soft interior which is very shock absorbent and does not stand fast when it is impacted by a moving object such as a human body. So you see a restraint is not something that necessarily holds you back in a collision, such as an air bag or lap/shoulder belt combination.

Frankly, passive restraints are not inexpensive and their expense will be passed on to the ultimate consumer of a motor vehicle. Expenses associated with the existing manual

belts is a fraction of the passive restraint cost. Manual belts are already in place and have been since 1964 when it was required that a seat belt alone be installed in all new motor vehicles. They've been available since the 1940's as options on motor vehicles. Since 1964, the addition of the required shoulder harness has brought us to where we are today.

Most recent manufacturer estimates of passive restraint costs are quite high. General Motors estimates the cost of installation of air bags to be approximately $1,100 per vehicle. Ford Motor Company estimates air bags for the driver and front seat passenger to be over $825 and Chrysler estimates them to be somewhere between $600 and $800. As far as the passive belt or the motorized belt system which we eluded to earlier, estimates run from General Motors of approximately $70 to $100; Ford's estimate is roughly $150; and Toyota is up to $350. We would point out that the motorized belts or the passive belt systems seem to only be a good option in the smaller compact vehicles while in larger vehicles air bags would probably be installed in lieu of the passive belt system. Volkswagen recently offered a $75 option for a belt and knee bolster combination. Mercedes offers a driver-only air bag and front passenger belt retracter as an $880 option. So, as you can see, these are not inexpensive

items to put onto a vehicle and, of course, if they are installed the customer is going to be the one who pays for the installation either as an option or mandatory equipment.

Additionally, replacement costs of an air bag are estimated by manufacturers at 2-3 times the original cost. So if you took General Motors' estimate of $1,100 for their cost to install an air bag, the installation by a dealer or by a repair facility after an air bag has been expended would be somewhere from $2,200 to $3,300.

This brings us to our next point, what happens when an air bag goes off? First of all air bags (and we will use that as a broad generality because it would be the most common type of passive restraint) will go off on a frontal impact of approximately 12 miles an hour or greater. The bag will inflate in a matter of 100ths of a second and immediately start to deflate as the occupant falls into or travels into the air bag. Of course, there is always the possibility the air bag will deploy when there is not a frontal impact of 12 miles per hour or greater and it could deploy with an impact at a slower speed or simply without warning. The system would be electrical and any flaw in the electrical system, of course, could create a short which would cause the bag to dispense. Secondly, there's the problem

of the defective system which no one would know about since there is no way to really test the future functioning of an air bag system. Even in an impact of 12 mph or greater it is possible that an air bag would not expand when it was supposed to. An air bag going off without an impact could create many more problems and could be a contributing factor to an accident which would lead to injury because the air bag that was supposed to protect the driver and the front seat occupant would not be there to do so. You could imagine what the multiplier effect would be if a bag deployed and caused an accident involving a second or third vehicle.

It is our feeling that a substantial number of consumers will not accept passive restraint devices. During 1974-1976 G.M. offered air bags as a $300 option to full size or certain full size Oldsmobiles, Buicks and Cadillacs. Only 10,000 air bag units were sold with these vehicles and that represented only 3% of General Motors' production capacity. Consumer lack of acceptance is further reflected in the success of the ignition interlock experience that we all saw during 1974 and a couple of years thereafter. The interlock system was where the car could not be started until the driver and front passenger had buckled their seat belts. There were as many ways to get around that as

there were cars on the road. G.M. has offered passive belts in 1978-1980 model Chevettes in the Chevrolet line and despite sales incentives and national merchandising only 13,000 out of the 415,000 sold at that time had the passive restraint systems.

Our next concern dealing with the air bag passive restraint is the liability which a repair shop could have if they had to work on a vehicle equipped with air bags or replace an air bag system in a vehicle. This would not only be franchise dealers but would possibly include service stations and any other type of repair facility you could think of as well as the "shadetree mechanic". We feel that a severe liability exposure would be put upon these repair facilities, which in turn, would raise insurance rates to the dealers and to the repair facilities which in turn, would raise their cost of doing business which would be reflected in higher repair bills for all types of repairs for the consuming public.

Special safety rules apply to the transporting, handling, storage and scrapping of air bag devices. Technicians would have to be specially trained; again, more expense. For example, take a vehicle that was wrecked in such a manner that its air bag deployed. A dealership would repair the vehicle and in so doing would also be required to reinstall the air bag

system. The first problem is that there is no way to test the system. The only way you can test to see if it is properly installed and working is in a 12 mph collision which will discharge the system. The first problem is left unanswered, that is, now that we have replaced the system does it work? To carry this one step further, lets say the customer, after having the vehicle repaired, is driving down the road and the air bag goes off without a collision. Who do you think the consumer is first going back to? Naturally, he will go back to the person who installed the bag that went off inadvertantly. Converse to that is the consumer who, after having the bag refitted, is involved in an accident and the bag does not go off. Who do you think that customer or his survivors will go back to? Again, they are going to go back to the person who installed the air bag that did not work properly. This person will be the repair shop and the repair shop will find itself in the middle of what will probably be a very massive lawsuit, one that could be quite costly not only to the dealership but to the insurance company who carries the insurance on that dealership. By now you can see the problem and how things begin to multiply after a point. We don't feel that liability should be placed on dealers or repair facilities and they should not be subjected to that possibile

liability. The only way they can protect themselves from that possible liability is to carry higher insurance or refuse to work on that type of vehicle, both of which, in the long run, could cause an increased cost of doing business to a dealership which would naturally be passed on to the consumer who uses the dealership or repair facility.

We make one other point concerning the cost to the consumer. Considering the high initial cost of the air bag itself and the liability to which the automobile insurance companies would be exposed by having to pay for the replacement of the systems, it would seem apparent that higher insurance premiums for autos would be in the offing. The initial cost alone could place the total cost of the car into a higher insurance premium category and although data is not available for underwriting purposes, we're sure that insurance companies would probably take a hard look at the estimated cost of repair and add that, some way, into a possible increase in insurance premiums.

Finally, it will take some 13 years to get virtually every vehicle on the roads of the U.S. covered by some type of passive restraint system if the passive restraint mandate is allowed to go into law. Seat belts and shoulder harness systems for front seat occupants and seat belt systems for rear seat

occupants are already in virtually every car in the country today with the exceptions being those that are older than 1964 and vehicles would would be exempt from the passive restraint rule such as large trucks. Why wait 13 years to afford protection to the citizens of Kansas and of the United States when it is available today through a mandatory seat belt use law? Finally, air bags or passive restraints alone are not the answer. Air bags are effective under certain conditions, frontal crashes, and they do assist in saving lives and preventing injuries but they are much more effective when the lap and shoulder belt systems are used.

The system currently in almost every vehicle on the road today provides a tremendous amount of protection when properly used. The only way to make sure these systems are used and at the same time save consumers and government a tremendous amount of money is to mandate use of seat belts in motor vehicles on the roads of Kansas.

Thank you.

(6)

Statement to:
SENATE TRANSPORTATION AND UTILITIES COMMITTEE

RE: S.B. 144 - Requiring the Use of Safety Belts
February 21, 1985
Topeka, Kansas

Presented by:
Paul E. Fleener, Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and members of the Committee:

We appreciate the opportunity to make a very brief statement regarding the policy position of the farmers and ranchers who are members of Farm Bureau regarding the topic of automobile safety in general, and more specifically in connection with the use of safety belts in motor vehicles.

Our policy development procedure gives numerous opportunities for individual farmers to express themselves on items of importance. The topic of safety belt use in vehicles was discussed by our members last fall. They responded to questions relating to whether or not we should have a policy position and if so what that position should be. I should also point out to you that in the discussion of the topic there was vehement opposition to the "federal blackmail" which would require state legislation on safety belts. But I hasten to add there is no question in the minds of our people on the safety factor of using restraints and belts and other safety equipment.

At our annual meeting in Wichita last December our delegates adopted the following policy position regarding safety belts:

2/22/85
ATT. (6)

Automobile Safety

We deplore the blackmail tactics of the federal government to bring about seat belt use laws. We should have a seat belt use law in Kansas, not because the federal government requires it, and not because our highway funds and user taxes are held hostage, but because the use of seat belts saves lives.

There is a nationwide drive, of course, for legislation to require our people to buckle up. One would think the use of safety belts would be almost automatic given the statistical information on the savings and the safety passengers who use them as opposed to those who do not. But here we are today discussing legislation which our people support because it makes good sense to help people understand the safety features of using belts in motor vehicles.

Recently our organization announced the new safety belt promotional program. Appended to this statement is a brief view of that program. Our Safety Director for Farm Bureau provided us with this additional information which we are pleased to share with you and the other members of this committee.

Thank you for this opportunity.

Kansas Farm Bureau, Inc.
2321 Anderson Avenue, Manhattan, Kansas 66502 / (913) 537-2261

On February 13, Kansas Farm Bureau announced a new safety belt promotional campaign. Briefly the program consists of:

1. Producing radio, television and news stories stressing the value and importance of safety belt use.

2. Making available brochures, posters, films and formal presentations by staff members at no cost to schools, civic clubs, church groups etc.

3. One of our service companies is providing a free $10,000 life insurance benefit to those insured who are killed while wearing a safety belt.

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Supporting Senate Bill 144 requiring the use of seat belts.

Presented to the Senate Transportation & Utilities Committee, Sen. Bill Morris, Chairman; Statehouse, Topeka, Thursday, February 21, 1985.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here this morning on behalf of the members of our Association and the highway transportation industry. We support Senate Bill 144 which would require the use of seat belts.

Attached to this statement is a copy of the resolution our Association adopted at its annual membership meeting held as a part of our convention on September 28, 1984.

The resolution points out the safety benefits that our industry sincerely believes will result from the consistent use of seat belts.

The federal Department of Transportation rules under section 392.16 and 393.93 require the driver seat of trucks and truck-tractors to be equipped with seat belt assemblies and, if so equipped, prohibits the vehicle to be driven unless the driver has properly restrained himself with the seat belt assembly.

If you have young people in your family who now are beginning to drive a car, adoption of this legislation, we believe, will afford a discipline to those young drivers that well might save their life and the lives of those riding in the vehicles they operate.

We would request favorable consideration of Senate Bill 144.

#####

ATT. (7)
2/22/85

RESOLUTION

SAFETY BELT USE LEGISLATION

WHEREAS, the effectiveness of safety belts in reducing deaths and injury severity in motor vehicle crashes has been documented in numerous studies, and

WHEREAS, in jurisdictions where mandatory safety belt laws have been in effect, there has been a significant reduction in injuries, deaths and economic losses, and

WHEREAS, the U.S. Secretary of Transportation has mandated that either two-thirds of the citizens of this nation live in states with safety belt use laws or all passenger cars will be equipped with air bags be it therefore,

RESOLVED, that the Kansas Motor Carriers Association strongly supports a state safety belt use law as a rule of the road in Kansas to reduce human suffering and impairments due to passenger cars crashes.

Adopted September 28, 1984
Annual Membership Meeting
Kansas Motor Carriers Association

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RON SMITH
Legislative Counsel

KANSAS BAR ASSOCIATION

SB 144
Senate Transportation Committee
February 22, 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.

SB 144 is a "model" safety belt act. There are, however, <u>two separate issues in each of these bills</u>: (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.

Between yesterday morning and today, we also had hearings on similar legislation in the House Transportation committee. Others have given you better statistics than I can to support the public safety aspects of SB 144. 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

ATT. (8)
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emphasis on this aspect.

Everything in this legislation except Subsection 4(b) is geared to 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 violently rear ended?

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 subsection 4(b) damages are mitigated, does that include mitigation of PIP benefits paid under our no fault law? I don't think it was intended to, nor should it.

Fourth, subsection 4(b) forces mitigation of damages against unbuckled plaintiffs when the fact that the plaintiff was unbuckled may have nothing to do with the injuries sustained. Yet you're going to take away some of the plaintiff's recovery.

Finally, what is the public benefit if we change our evidentiary law to allow mitigation of damages? Isn't this a private benefit solely to the defendant and the defendant's insurance company?

Special Comments.

I'd like to make several points regarding yesterday's testimony.

I. Compliance with Federal Guidelines

It's been pointed out that all of the bill, as drafted, meets federal DOT guidelines. Several conferees yesterday indicated the important thing about this bill was its safety aspects, and the fact that it meets federal guidelines.

There also was testimony in the House that of the four states that have passed mandatory seat belt laws, NONE OF THOSE STATES comply with the federal guidelines.

NONE OF THOSE STATES have adopted this model act.

Bob Storey indicated to the House yesterday, responding 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 federal guidelines. Why, then, can't you modify this legislation by striking subsection 4(b)? Isn't the theory the same?

II. Mandating Evidentiary Changes in our Code

Many conferees supported subsection 4(b) mitigation of damages provisions. John Jurcyk stated yesterday: its "unfair for defendants to be held liable for their negligence if a belt would mitigate the plaintiff's damages."

I suggest that is a very narrow view. Who caused the injury? The plaintiff? Or the Defendant? It forgets the concept of what we lawyers call "proximate causation".

The Pattern Instructions for Kansas define proximate cause as:

> "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)

Proximate cause in an auto negligence case is simply an answer to the question: What is the primary cause of a plaintiff's injury? Is it the defendant's negligence in running into the plaintiff, or the fact that the plaintiff was not wearing a seat belt?

Think about that answer. It goes to the root of why subsection 4(b) is an evidentiary matter that changes our civil rules of procedure. It is not a safety matter.

There was some grumbling in our Executive Council of the mandatory nature of this law, that the Feds were blackmailing us, that we had to comply in order to avoid having to pay for air bags.

Mitigation of damages is not a safety matter.

Including mitigation of damages in federal guidelines does not make it a safety matter.

Mitigation of damages is not done in the name of the public.

But note what the feds are forcing the Kansas legislature to do:

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.

Both are being mandated. We don't mind the mandating of public safety. But if any state legislature starts allowing the federal government to mandate the way our code of civil procedure is drafted, what is to keep Congress from deciding that Products Liability litigation ought to be federally controlled, not state controlled? Or a national solution to every sticky legal problem?

We would be losing that 10th Amendment power, bit by bit. Why would we need state legislatures? Let Congress do it.

I'm not sure you want this precedent.

Yes, this state 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 matter, not an evidentiary one.

III. Kansas Case Law

In 1981, the Kansas Court of Appeals heard the case Taplin v. Clark. The defendant tried to introduce a "seat belt defense," evidence that the plaintiff was not wearing a seat belt and thereby mitigate 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. Note the language on the last page.

SB 144 creates this duty the court talks about. It makes it mandatory that belts be used. The Court can guide the jury--without the need for subsection 4(b) of this bill--in whether the evidence of non-use is relavent on an individual case basis, assuming it wants to overrule Taplin v. Clark.

IV. Double Mitigation Possibilities

Under our comparative negligence system, the plaintiff's negligence is compared with the defendant's. If the plaintiff is less than 50% at fault, he collects his proportionate amount of damages.

Section 4(b) of SB 144 is an unstructured statute. If the plaintiff was not wearing a seat belt, how will section 4(b) be used?

Will the percentage of plaintiff's negligence be increased?

Or will the amount of damages be decreased?

Or, will the jury do both? If they increase the plaintiff's percentage of fault, AND lower the amount of damages, this constitutes a double mitigation. That's unfair.

V. Front Seat-Back Seat Discrimination

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.

VI. Effect on Court Dockets

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

Instead of simple auto negligence cases, each side will have to find expert engineers, accident reconstruction experts, and pay to take their depositions and have testimony in court to prove or disprove mitigation of damages. This will:

1. Drive up costs of litigation for all parties, which may impact EVERYONE's Auto insurance;

2. Lengthen trials by perhaps several days;

3. 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.

KBA cannot support subsection 4(b) because it is an evidentiary matter that has little relavence towards saving lives or reducing injuries.

KBA suggests deleting section 4(b) and reporting the bill 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.