

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Rex Crowell at
Chairperson

1:30 ~~am~~ p.m. on March 18, 1986 in room 519-S of the Capitol.

All members were present except:

Representatives Justice, Knopp, Spaniol - All Excused.

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Hank Avila, Legislative Research
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Secretary John B. Kemp, Kansas Department of Transportation
Representative Mike O'Neal
Mr. Robert W. Storey, Traffic Safety Now, Inc.
Mr. Bill Henry, Kansas Engineering Society
Mrs. Candy Norwood, Lecompton, Kansas
Sgt. Steve Jenson, Kansas Highway Patrol
Mr. Paul Fleener, Kansas Farm Bureau
Mrs. Rosemary O'Neil, Kansas Head Injury Association
Mr. Pat Barnes, Kansas Motor Car Dealers Association
Ms. Susan Miringoff, Kansas State Nurses Association
Mr. Jim Edwards, Kansas Chamber of Commerce and Industry
Ms. Nancy Bauder, Kansas Women for Highway Safety
Mrs. Mary Turkington, Kansas Motor Carriers Association
Dr. Lorne Phillips, Kansas Department of Health & Environment
Lt. William A. Jacobs, Kansas Highway Patrol
Ms. Kelly Roesch, Kansas Trial Lawyers Association

The meeting was called to order by Chairman Crowell, and the first order of business was a hearing on SB-520 concerning the requirements for use of safety belts in automobiles.

Mr. John B. Kemp, Secretary of Transportation, testified in support of SB-520. (See Attachment 1)

Secretary Kemp said that in July, 1984, U.S. DOT Secretary Elizabeth Dole issued a rule-making dealing with automatic automobile occupant protection. He explained the rule mandates vehicle manufacturers to provide for automatic occupant protection in all vehicles by the 1990 model year unless two-thirds of the nation's population are covered by state mandatory seat belt use laws.

Secretary Kemp stated the use of occupant restraints could significantly reduce the number of fatalities and injuries associated with passenger car and light truck accidents and reduce the societal costs of those injuries. He also pointed out the impact of seat belt usage is an approximate reduction of fatalities and serious injuries by 50 percent if 100 percent of the driving public wore seat belts. He said during 1985 there were 396 fatalities from passenger car accidents in Kansas and an estimated 4,614 serious injuries.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation

room 519-S, Statehouse, at 1:30 ~~xxx~~/p.m. on March 18, 1986

Representative Mike O'Neal testified concerning SB-520. He said because of the amendment dealing with inadmissibility for purposes of determining negligence of failure to use seat belts, he does not support the bill. (See Attachment 2)

Representative O'Neal distributed to Committee members a letter from Mr. Ron Smith, Legislative Counsel for the Kansas Bar Association. (See Attachment 3) He said the Kansas Bar Association is recommending the law be drafted in such a manner, that evidence of violation of the duty imposed by statute can be, in appropriate situations, evidence of negligence and taken into consideration by a jury in determining the fault of the parties.

Mr. Robert W. Storey, Traffic Safety Now, Inc., testified in support of SB-520. (See Attachment 4)

Mr. Storey said the bill provides it shall be mandatory for any driver of a vehicle, and any passenger in the front seat to engage their safety belts before the vehicle is in operation. He added this does not include farm implements, pickup trucks or farm vehicles used in the operation of farms.

Mr. Storey told the Committee the primary reason for the introduction of the mandatory safety-belt law is to educate individuals to use safety belts as well as to train minors to use them, as such a law can save the lives of thousands of persons.

Mr. Bill Henry, Kansas Engineering Society, gave favorable testimony concerning SB-520. (See Attachment 5) He stated the engineers of the state of Kansas feel a seat belt act is a safety measure which will assist an occupant of a vehicle in all types of accidents. He pointed out that air bags are effective in frontal collisions only.

Mrs. Candy Norwood, Lecompton, Kansas, testified in support of SB-520. (See Attachment 6) She gave a personal account of an automobile accident wherein she feels her own life as well as her daughter's life would have surely been lost had they not been wearing safety belts.

Sgt. Steve Jenson, Kansas Highway Patrol, testified in support of SB-520. Sgt. Jenson related that he has been a trooper for 12 years and has had the unfortunate opportunity to have worked 25 fatal accidents. He stated he has never unbuckled a dead person at the scene of an accident.

Mr. Paul Fleener, Kansas Farm Bureau, testified favorably concerning SB-520. (See Attachment 7) He said the farmers and ranchers who are members of Farm Bureau adopted a resolution at the 1984 Annual Meeting of Kansas Farm Bureau supporting a seat belt use law for Kansas. He stated such a law is supported because it will improve safety on the highways.

Mrs. Rosemary O'Neil, Kansas Head Injury Association, gave favorable testimony in support of SB-520. (See Attachment 8) She told the Committee she was thrown from an automobile in a one-car accident in 1982, and received a head injury. Mrs. O'Neil urged the Committee to consider SB-520 for passage.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,
room 519-S, Statehouse, at 1:30 ~~am~~ p.m. on March 18, 1986

Mr. Pat Barnes, Kansas Motor Car Dealers Association, testified in support of SB-520. (See Attachment 9) Mr. Barnes said they support enactment of a mandatory seat belt law in Kansas, and clarified some of the technical aspects of passive restraints. He said passive restraints are expensive and the cost will be passed on to the consumer of a vehicle. He pointed out General Motors estimated air bag installation would cost approximately \$1,100 per vehicle.

Mr. Barnes stated "air bags" go off with a frontal impact of approximately 12 miles an hour or greater, and there is always a possibility the "air bag" will deploy with a lesser impact or accidentally without warning.

Ms. Susan Miringoff, Kansas State Nurses Association, gave favorable testimony concerning SB-520. (See Attachment 10)

Mr. Jim Edwards, Kansas Chamber of Commerce and Industry, spoke in support of SB-520. (See Attachment 11) He urged the Committee to support this legislation and reinforce the use of something which is already in place and has been paid for, the automobile safety belt.

Ms. Nancy Bauder, Kansas Women for Highway Safety, testified in favor of SB-520. (See Attachment 12) She stated their main objective is to provide educational programs across the state promoting highway safety.

Mrs. Mary Turkington, Kansas Motor Carriers Association, gave a statement for Mr. Charles Belt, Highway Users Federation, in support of SB-520. (See Attachment 13) She said a resolution was adopted to urge the Kansas Legislature to enact a safety belt use law.

Mrs. Mary Turkington, Kansas Motor Carriers Association, gave testimony in support of SB-520. (See Attachment 14) She said the Association believes that the citizens of Kansas will realize a significant reduction in injuries, deaths and economic losses if the 1986 Legislature adopts SB-520.

Dr. Lorne Phillips, Kansas Department of Health and Environment, testified in support of SB-520. (See Attachment 15) He stated their position from a health and safety perspective is that all vehicle occupants be properly restrained, and recommends passage of SB-520 as amended by the Senate Committee of the Whole.

Lt. William A. Jacobs, Kansas Highway Patrol, spoke in support of SB-520. (See Attachment 16) He stated the Patrol's support of mandatory safety belt legislation is based on long experience in the area of accident investigation and countless studies which have been conducted.

Lt. Jacobs stated a common fear is being trapped in a fire following a collision, however, fire occurs in only one-half of one percent of all collisions.

Ms. Kelly Roesch, Kansas Trial Lawyers Association, testified in support of SB-520. She expressed reservation about the amendment in Section 4, subsection (c) concerning the failure to use safety belts not being admissible in any action for the purpose of determining comparative negligence or mitigation of damages.

A statement from the Kansas Congress of Parents and Teachers, was passed out to Committee members in support of SB-520. (See Attachment 17)

The hearing on SB-520 was concluded.

The meeting was adjourned at 3:00 p.m.


Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

DATE: 3-18-86

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Ruth Meserve	8213 Brian Lane Valley	Ks Coalition for Drinking - Free Drinking
Kenneth Baer	Humboldt Ave RR#1 Box 210	Farm Bureau
Glen E. Roberts	Routel Sawarbug, Ks 66772	Farm Bureau & USD 258 Bus Supervisor
Ginger Roberts	Routel Sawarbug, Ks 66772	Farm Bureau
Ada Baer	RI Humboldt, Ks 66748	Farm Bureau
SUSAN TANNENWALD-MIRINGOFF	TOPEKA	Ks States Assoc Assn
Ruth Coulbin	Topeka	Girl Scout Council
Deb Miller	Topeka	KDOT
Ed DeSoenie	TOPEKA	KDOT
Donna Smith	Topeka	Ks. Bar Assoc.
John C. Bottenburg	Topeka	3m
Larry Jones	Overland Park	B. L. E.
Ron Calbert	Newton	U.T.U.
Walter Knitter	Clay Center	U M M
Heck Moyer	Clay Center	U M M
William J. Peter	Clay Center	U M M
Emuel Luthi	Clay Center	U M M
Milton B. Regnier	Clay Center KS	U M M
Joan Smutz	" "	U M M
Tom Whitaker	Topeka	Ks Motor Carriers Assn
Marge Tunkins	Topeka	Kansas Motor Carriers Assn
Sam D. Hedges	Topeka	KOHE
NR SHARBERT	Denver Colo	GENERAL MOTORS
B. PERDUE	TOPEKA	TRAFFIC SAFETY NOW
J. Barry Conaghan	LEAWOOD KS	FORD MOTOR CO
Jayla Nichol	OKLA, CITY, OK.	MOTOR VEHICLE MANUFACTURERS ASSN.
John B. Kemp	KDOT Topeka	KDOT

GUEST LIST

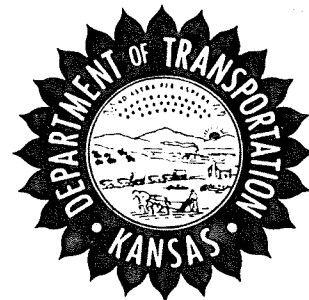
COMMITTEE: Transportation

DATE: 3-18-86

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
Bob Storey	Topeka, Kansas	TSU INC
Kelle Reesch	Lawrence, KS	KT LA
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Lt. BILL JACOBS	TOPEKA	KANSAS HIGHWAY PATROL
Sgt STEVE JENSEN	OLATHE	KANSAS HIGHWAY PATROL
Michael Wolf	Lawrence	Student
Natalie Jennings	Lenexa	student
DAVE TOPLIKAR	LAURENCE	LAURENCE JOURNAL-WORD
Bill Henry	Topeka	KS Engineering Society
Camie Woodston	Rushville, Mo.	Student-assistant ^{Team} _{Alan}
PAT BARNES	Topeka	Ks. Motor Car Dealers Assn
Candy Norwood	Leocompton	
Nancy Bander	Leavenworth	Ks. Women for Highway Safety
Dee Busselle	Cottonwood Falls	
Richard Schlegel	Manhattan	ABATE
Dan Kahlow	Topeka	Ks Contractors Assn.
Jim Sullivan	"	Ks. MOTOR CAR DEALERS ASSN.
Jim Edward	"	KOCT
CHARLES BELT	WICHITA	WICHITA C OF C
BILL CREECH	TOPEKA	KCC
Gene Shlor	Topeka	TSN
BARBARA WELLS	Elmdale, Ks	
Shirley Oldham	Cottonwood Falls	
Helen Evans	Cottonwood Falls.	
Supanne Padet	Topeka, Ks	Washburn University/KWA
Barbara Etzel	Topeka	Sproul Radio Office

KANSAS DEPARTMENT OF TRANSPORTATION



JOHN B. KEMP, Secretary of Transportation

JOHN CARLIN, Governor

MEMORANDUM TO: HOUSE COMMITTEE ON TRANSPORTATION

FROM: JOHN B. KEMP, P.E.
SECRETARY OF TRANSPORTATION

REGARDING: SENATE BILL 520

DATE: MARCH 18, 1986

Mr. Chairman and members of the Committee, it's a pleasure to be here today and to appear as a proponent of Senate Bill 520, as amended, a mandatory seat belt use law.

For clarity's sake, I would like to provide you with some background information on how states got to where they are on this issue.

In July, 1984, U.S. DOT Secretary Elizabeth Dole issued a rule-making dealing with automatic automobile occupant protection. The rule mandates vehicle manufacturers to provide for automatic occupant protection in all vehicles by the 1990 model year unless two-thirds of the nation's population are covered by state mandatory seat belt use laws. A great deal of legislative and interest group discussions have taken place since Secretary Dole issued this rule.

The rule provides the alternative of coverage of two-thirds of the nation's population by the state mandatory seat belt use laws by 1989. The laws passed by the states must meet certain criteria in order for the population of that state to count towards the two-thirds option.

These are:

1. Require each front seat occupant to have safety belt fastened.
2. No waiver of use except for medical reasons.
3. Minimum twenty-five dollar penalty for failure to use a seat belt in vehicles equipped with such devices. Court costs can be included in the twenty-five dollar penalty. (Applies to front seat occupants.)
4. Failure to wear seat belts admissible in mitigation of accident damages.

*H. Transp. 3/18/86
Attach. 1*

5. A program to educate the public on benefits of the law.
6. A reporting program which requires the state to submit an evaluation of the law's effectiveness.

State laws that meet these criteria are referred to as "conforming" laws.

The question of whether legislation is conforming or nonconforming is somewhat in flux. Though 17 states and the District of Columbia have passed mandatory seat belt laws, only three appear to be conforming and Secretary Dole has yet to rule on whether or not the laws are or are not conforming. Senate Bill 520, as amended, would not technically be considered a conforming piece of legislation because the requirement that failure to wear seat belts will be admissible in mitigation of accident damages is omitted and there are waiver provisions for other than medical reasons. However, I would repeat that it is not yet clear how Secretary Dole will rule on this question.

LEGISLATIVE ACTION AND OPTIONS

Legislation has been introduced in 42 states to date. As previously noted, seventeen states and the District of Columbia have enacted seat belt use laws. In each, only vehicles equipped with seat belts are covered, and because all states now have laws requiring small children to be restrained, the belt use laws generally refer only to adults and older children. Attached is a list of states with belt use laws in effect. The list covers the laws' penalties and enforcement provisions (if stated), and indicates whether they appear to conform with the six criteria set by the Secretary of Transportation.

SAFETY EFFECTS

As I stated earlier in my testimony, I am happy to appear today as a proponent of this bill. There is no question but that the use of seat belts saves lives. At the Department of Transportation we feel strongly enough about seat belt use that we require our employees to wear seat belts when they are traveling in vehicles on behalf of the State.

The use of occupant restraints could significantly reduce the number of fatalities and injuries associated with passenger car and light truck accidents and reduce the societal costs of those injuries.

The impact of seat belt usage is an approximate reduction of fatalities and serious injuries by fifty percent if 100% of the driving public wore seat belts. During 1985, there were 396 fatalities from passenger car accidents in Kansas and an estimated 4,614 serious injuries (1985 accident data is not complete at this time).

To give the committee some sense of the impact of seat belt usage, the attachment shows the impact of a voluntary program, mandatory seat belt use law, and automative restraints plus seat belts. Each figure assumes that the strategy was in place throughout 1985, that enforcement was adequate, and in the case of the third option, that all cars had automative restraints.

Mr. Chairman and members of the Committee, as you can see from the chart, if only 30% of all Kansans complied with Senate Bill 520, 40 lives would be saved and 461 serious injuries would be avoided. At a figure of 70% usage, the savings are dramatic, 118 lives and 1,384 serious injuries.

We believe that Senate Bill 520, as amended, is a very worthwhile piece of legislation and urge your favorable consideration.

Attachments

SEAT BELT USE LAWS

<u>STATE</u>	<u>EFFECTIVE</u>	<u>PROVISIONS</u>
California	1-1-86	Maximum \$20 fine, first offense, maximum \$50 for second; secondary enforcement. Nonconforming language.
Connecticut	1-1-86	\$15 fine. Nonconforming language.
District of Columbia	12-12-85	\$15 initial penalty, subsequent penalty to be set by mayor; secondary enforcement. Nonconforming language.
Hawaii	12-16-85	\$15 fine; primary enforcement. Nonconforming language.
Illinois	7-1-85	Maximum \$25 fine; no minimum; secondary enforcement. Nonconforming language.
Indiana	7-1-87	Maximum \$25 fine, no minimum; secondary enforcement. Nonconforming language.
Louisiana	7-1-86	\$25 fine; secondary enforcement. Nonconforming language.
Massachusetts	1-1-86	\$15 fine; secondary enforcement. Nonconforming language.
Michigan	7-1-85	Initial \$10 fine, rises to \$25 after 1-1-86; secondary enforcement. Conforming language.
Missouri	9-18-85	Maximum \$10 fine; secondary enforcement. Nonconforming language.
Nebraska	9-6-85	\$25 fine, secondary enforcement. Conforming language.
Nevada	7-1-86	Maximum \$25 fine or community service plus a \$10 assessment; secondary enforcement. Law contingent upon federal adoption of 70 MPH speed limit. Nonconforming language.
New Jersey	3-1-85	\$20 fine; secondary enforcement. Nonconforming language.

New Mexico	1-1-86	Minimum \$25 fine, maximum \$50; primary enforcement permitted. Conforming language.
New York	12-1-84	Maximum \$50 fine; primary enforcement permitted. Nonconforming language grandfathered by U.S. DOT.
North Carolina	10-1-85	After 12-31-86, \$25 fine; primary enforcement permitted. Nonconforming language.
Oklahoma	2-1-87	\$10 fine, plus \$15 administrative costs; secondary enforcement. Nonconforming language.
Texas	9-1-85	Minimum \$25, maximum \$50 fine after 12-1-85. Nonconforming language.

SEAT BELT USAGE ¹

Options	Net Gain	Fatalities Reduced	Serious Injuries Reduced
Voluntary program w/increased emphasis, education, public information	1%	4	46
Mandatory Seat Belt Use Law:			
30% use	10%	40	461
40% use	15%	59	692
50% use	20%	79	923
60% use	25%	99	1154
70% use	30%	118	1384
Automotive Restraints Plus Belts	45%	178	2076

1/ Based on estimated 1985 accident data.

O'Hanlon

claims act is not whether the same or similar work is actually being done by a private person but what the standard would be if the work were to be done by a private person.

5.

An instruction on the duty required by the tort claims act under K.S.A. 75-6103(a) is appropriate if the government activity is such that there would be specific duties required of a private person doing the same work, other than to perform in a non-negligent manner.

6.

The standard instructions used in negligence actions are adequate under the tort claims act if the only duty required of a private person would be to perform in a non-negligent manner.

7.

Evidence of other accidents may be admitted if the court finds that the accidents have sufficient similarity to the accident in the case before the court. The admission of such evidence lies within the sound discretion of the trial court.

8.

An abuse of discretion is said to exist only when no reasonable person would take the view adopted by the trial court.

9.

The fact that an allegation of negligence is asserted in a pretrial pleading does not justify an instruction on that particular allegation if there is no evidence to support it.

Appeal from Sedgwick district court, KENNETH C. KIMMEL,

~~Judge Opinion filed December 27 1985 Reversed and remanded~~

for new trial.

H. Transp. 3/18/86
Attach. 2

Jerry G. Elliott, of Foulston, Siefkin, Powers & Eberhardt, of Wichita, argued the cause, and *Mikel L. Stout* and *Nola Tedesco Foulston*, of the same firm, were with him on the brief for appellant.

Scott Logan, office of chief counsel, Kansas Department of Transportation, argued the cause, and *David G. Tittsworth*, chief counsel, *Jay L. Smith* and *Timothy P. Orrick*, of the same office, were with him on the brief for appellee.

The opinion of the court was delivered by

HOLMES, J.: This is an appeal by the plaintiff in a case which arose from a one-car accident that occurred in the early morning hours of July 31, 1980, on Kansas Highway 25 (K-25) seven miles south of Lakin. William T. Rollins (plaintiff-appellant) was a passenger in the back seat of the vehicle, a 1979 Chevrolet Chevette. The accident occurred on a section of highway that was undergoing resurfacing by the Department of Transportation of the State of Kansas (KDOT).

Rollins brought suit against KDOT and the Board of County Commissioners of Kearny County, Kansas, alleging failure of KDOT to exercise due care in the design, construction and maintenance of K-25. The Board of County Commissioners was subsequently dismissed from the action. A Sedgwick County District Court jury found the driver of the car sixty-five percent at fault, the plaintiff thirty-five percent at fault, and found no fault on the part of KDOT. Rollins appeals, claiming several errors on the part of the trial court.

Between midnight and 1:00 a.m., on July 31, 1980, Lana Swisher, BaLynda Bell and appellant left Ulysses, Kansas, in Lana's car, to travel to Lakin on K-25, a distance of approximately twenty-seven miles. Lana was driving. In the

area south of Lakin, KDOT was resurfacing the highway for about four miles with bituminous asphalt. The resurfacing work caused the surface of the roadway to extend above the highway shoulders, resulting in a drop-off at the edge of the paved portion of the highway. There were no warning signs in place and no temporary striping of the center and edges of the highway. As the Swisher automobile traveled this portion of the highway, its right wheels dropped off the road surface, the driver lost control and the car crashed in the ditch. Appellant was thrown from the vehicle and received serious injuries resulting in his being paralyzed from the waist down. Additional facts will be set forth as necessary in considering the various points on appeal.

The first issue raised by the appellant is that the trial court erred in admitting testimony regarding the effect of the driver's failure to use her seat belt on her ability to control the vehicle. Rollins' objection to evidence of the driver's failure to use a seat belt was overruled and the appellee's accident reconstruction expert was allowed to testify as to the effect of nonuse of a seat belt on a driver's ability to control his vehicle. It was his opinion Lana would not have lost control if she had been using her seat belt and that the accident would not have happened. In allowing the evidence, the judge stated he was only allowing it for the purposes of showing control of the vehicle and not to show negligence. We have consistently held that evidence of the nonuse of seat belts is inadmissible in a negligence action. In *Hampton v. State Highway Commission*, 209 Kan. 565, 498 P.2d 236 (1972), the defendant attempted to introduce evidence that the plaintiff was not using a seat belt to show negligence on behalf of plaintiff and a failure to mitigate damages. We held:

"A driver has no legal duty to use an available seat belt, and evidence of nonuse is inadmissible either on the

issue of contributory negligence or in mitigation of damages." Syl. ¶ 9.

Following the adoption of comparative negligence, the issue was before the Court of Appeals in *Taplin v. Clark*, 6 Kan. App. 2d 66, 626 P.2d 1198 (1981), wherein the court stated:

"[U]nder 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." p.70.

The rule propounded in *Hampton* and *Taplin* was recently reconsidered and adhered to in *Ratterree v. Bartlett*, 238 Kan. 11, 707 P.2d 1063 (1985). While the foregoing cases involved the plaintiff's failure to use a seat belt, the rule propounded is equally applicable when it is someone other than the plaintiff who is alleged to be at fault for failure to use the belts. KDOT's position was clearly set forth in Instruction No. 9, wherein the court states the appellee's contentions to be that the driver was *negligent* in failing to keep her vehicle under control. The attempt by the trial court to distinguish the driver's "control" of the vehicle from negligence was confusing as well as erroneous. For there to be fault assessed in a negligence action there must be some duty which has been breached and as there is no duty to use seat belts in Kansas, there can be no fault attributed to a person for failure to use them.

In his instructions to the jury the trial judge stated:
"The law of Kansas does not permit you to consider the presence and use or non-use of seat belts in any manner in arriving at your decision."

KDOT now asserts that, if the admission of the nonuse of seat belts by Lana was error, the foregoing instruction cured the error. We think not. It is clear that even with the giving of the instruction the trial court remained of the opinion the jury could consider the evidence on the issue of "control." To

allow KDOT's expert to voice an opinion based upon the nonuse of the seat belt by the driver was, in our opinion, so prejudicial that it could not be cured by the instruction given and certainly cannot be considered harmless error.

Although the foregoing would ordinarily dispose of this case, as it must be remanded for a new trial, there are other issues raised some of which we deem advisable to consider.

KDOT admits that it fell within the scope of the Kansas tort claims act, K.S.A. 75-6101 *et seq.* K.S.A. 75-6103(a) provides:

"(a) Subject to the limitations of this act, each governmental entity shall be liable for damages caused by the negligent or wrongful act or omission of any of its employees while acting within the scope of their employment under circumstances where the governmental entity, if a private person, would be liable under the laws of this state."

In *Carpenter v. Johnson*, 231 Kan. 783, 784, 649 P.2d 400 (1982), Chief Justice Schroeder, in writing for a unanimous court, stated:

"The Kansas Tort Claims Act, K.S.A. 1981 Supp. 75-6101 *et seq.*, a so-called 'open ended' tort claims act, makes liability the rule and immunity the exception."

K.S.A. 75-6104 sets forth numerous exceptions under which liability is precluded. There is no contention on appeal that any of the exceptions apply in this case. Appellant sought an instruction based upon K.S.A. 75-6103(a) and also sought to introduce evidence of the standards and duties which would be required by KDOT if the work were being done by a private contractor. It appears that during the daytime, while work was going on, various warning signs were erected to advise and protect the motorists using the highway. However, at night the State's employees removed the signs and no warnings of the

condition of the highway, shoulders or ditches were provided. Appellant contends that he could produce evidence that if a private person were doing the maintenance or repair, then warning signs and other safety precautions would be required at night, which were not provided by KDOT in doing its work upon the highway. KDOT in its brief argues it is not subject to the same standards of a private person doing the same work, and states:

"When plaintiff attempted to offer this evidence [KDOT's specifications for private contractors], defendant objected on the ground that the specifications were not relevant because they apply only to private contractors and are not applicable to defendant. Because there was no evidence of a private contractor's participation in the subject project, these specifications were irrelevant and wholly lacked probative value. . . .

"The plaintiff's arguments on this point illustrate his lack of understanding of the Kansas Tort Claims Act Plaintiff labors under the fallacy that pursuant to the KTCA, the 'defendant at bar is to be judged by the same standards as would be applicable to a private person resurfacing the roadway.' Plaintiff argues that these standards are relevant because '. . . the jury . . . is entitled to consider what standards defendant requires of private contractors in assessing the negligence of defendant at bar.' . . . In other words, plaintiff argues that K.S.A. 75-6103 imposes upon governmental entities all duties applicable to private persons.

"K.S.A. 75-6103(a) does not have this effect. The statute is intended to make governmental entities liable for the negligent acts of their employees where the employees were acting within the scope of their employment. Thus, K.S.A. 75-6103(a) is properly viewed as an effort to codify the common law doctrine of respondeat superior. The much-quoted article, 'Governmental

Liability: The Kansas Tort Claims Act [or The King Can Do Wrong]' by John A. Hageman and Lee A. Johnson, 19 W.L.J. 260 (1980), is instructive on this issue. In discussing K.S.A. 75-6103(a), the authors comment as follows:

The final condition of liability, 'under circumstances where the governmental entity, if a private person, would be liable under the laws of this state,' should be read in conjunction with the preceding phrase to effect a codification of the common law of *respondet superior*. 19 W.L.J. 260, 266-7 (1980).

The trial court properly ruled on this issue by sustaining defendant's objection."

We do not agree with appellee's interpretation of the statute. In that same article, immediately following the statement quoted by the appellee, the authors state:

"That is, the governmental unit will be held liable for the negligent acts of its employees, if under the same facts a private employer would be held liable. It is clear from the conspicuous absence of reference to the 'proprietary-government' distinction, and from cases construing this phrase in the Federal Tort Claims Act that the test of liability is not whether the activity is done by the private sector." Note, Governmental Liability: The Kansas Tort Claims Act [or The King Can Do Wrong], 19 Washburn L.J. 260, 267 (1980).

KDOT argues that construction and reconstruction are done by private contractors while mere maintenance is done by KDOT employees and that, although there are specific standards and duties required for construction, there are none for maintenance. The trial court found that the work being done upon the highway constituted maintenance and not construction or reconstruction. We agree with that conclusion. KDOT's position is that as it does its own maintenance and no private

contractors are involved, it is not subject to any standards or duties which might apply if the work were being done by a private contractor. The test is not whether the same or similar work is actually being done by a private person but what the standard would be if the work were to be done by a private person. We hold that in doing highway maintenance work, the duty under the tort claims act, absent any statutory exceptions, which KDOT owes the public is the same that would be required of a private individual or contractor doing the same work. If appellant had evidence of stricter standards and duties required by KDOT for similar work by a private person, which if breached could be found to be negligence, then he should have been allowed to present it. In addition, an instruction upon the duty required by the tort claims act under K.S.A. 75-6103(a) is appropriate if the governmental activity is such that there would be specific duties required of a private person doing the same work other than to perform in a non-negligent manner. The instructions given herein were the standard ones used in negligence actions and would be adequate if due care is the only duty that would be required of a private contractor doing the same work. However, when higher, different, or particularized standards would be required if a private person were doing the same work, then the governmental employees are to be held to the same standards in determining liability under the tort claims act and an instruction covering such standards is appropriate. The fact that KDOT policy is to do all its own maintenance does not relieve it and its employees of the standards which would apply if a private person did the work under contract with KDOT.

Appellant next asserts error in the trial court's ruling that evidence of an allegedly similar accident was inadmissible in evidence. Without going into detail, Rollins attempted to introduce evidence of an accident wherein a car ran off the same stretch of highway, at night, only nine days after the

present accident. There, the driver had gone off the highway when he swerved to miss a jackrabbit, while in the present case, there is no clear explanation why the right wheels ran off the edge of the road. Evidence of other accidents may be admitted if the court finds that the accident has a sufficient similarity with the accident in the case before the court. *Hampton v. State Highway Commission*, 209 Kan. at 575. The admission of such evidence lies within the sound discretion of the trial court. *State ex rel. Murray v. Palmgren*, 231 Kan. 524, 538, 646 P.2d 1091 (1982). An abuse of discretion is said to exist only when no reasonable person would take the view adopted by the trial court. *Reich v. Reich*, 235 Kan. 339, 343, 680 P.2d 545 (1984). While there were numerous similarities in the two events, there were also dissimilar factors and we cannot say the court abused its discretion in excluding the evidence.

Another issue raised by appellant is that the trial court erred in not allowing his expert to testify that in his opinion the highway was not reasonably safe for travel. In *Ratterree v. Bartlett*, 238 Kan. 11, we reiterated the rule that opinion testimony which goes to the ultimate issue of negligence is improper as invading the province of the jury. Here the ultimate issue for the jury to determine was whether the road was reasonably safe for the traveling public and, if not, whether it was due to KDOT's negligence. See *Lollis v. Superior Sales Co.*, 224 Kan. 251, 580 P.2d 423 (1978). Again, we cannot say the trial court abused its discretion in denying the opinion testimony.

Appellant asserts numerous errors in the instructions given by the trial court and in its refusal to give certain instructions requested by appellant. Many of these involved the seat belt and duty owed to plaintiff issues, and we assume similar problems with the instructions on those issues will not

arise in a retrial of this case. We do note, however, that the court's instruction setting out the contentions of the parties should be limited to the claims of negligence supported by the evidence. The fact that an allegation of negligence is asserted in a pretrial pleading does not justify an instruction on that particular allegation if there is no evidence to support it.

The final issue which we deem advisable to address is the trial court's admission into evidence of a 1980 version of the Kansas Driving Handbook. Lana was questioned by counsel for the appellee about her driving skills, when she obtained her driver's license and whether she had taken and passed a driver's education course. She had received a restricted license at the age of fourteen and an unrestricted license at sixteen, at least five years prior to this accident. At the time of preparing for her driver's license test she had been furnished a driver's handbook. She was also asked if she was familiar with the 1980 Kansas Driving Handbook and responded it was not the one furnished to her years earlier and she did not know what was in the 1980 version. We fail to see what relevance the admission of the 1980 driver's handbook had to the issues in this case. The trial court appears to have been under the impression that as it contained some "law" it could be considered by the jury and that the jury was not limited to the court's instructions on the law to be applied in this case. Considering the lack of foundation and relevance, the admission of the handbook was error.

We do not deem it necessary to address the other issues raised by the appellant as they are not likely to arise again on retrial.

The judgment is reversed and the case remanded for a new trial.

LOCKETT, J., concurring: I agree with the court on all issues raised, except that I would overrule *Hampton v. State Highway Commission*, 209 Kan. 565, 498 P.2d 236 (1972), and allow the trier of fact to consider the negligence factor of an occupant of an automobile who fails to use a seat belt.

Hampton is a 1972 case based on a 1970 Alabama decision, *Britton v. Doebling*, 286 Ala. 498, 242 So. 2d 666 (1970). There the Alabama court determined: (1) there was no statutory authority requiring that seat belts be installed or that they be used; and (2) admission of evidence of non-use of seat belts would allow the jury to "compare the damages" similarly to comparative negligence, a doctrine unknown to Alabama law. *Hampton* was decided in 1974, prior to the adoption of comparative negligence by our legislature.

In *Taplin v. Clark*, 6 Kan. App. 2d 66, 626 P. 2d 1198 (1981), the Court of Appeals stated that under comparative negligence the failure of a passenger of an automobile to use a seat belt was not a factor to consider. The *Taplin* court cited *Hampton's* conclusion that the existence of such a duty should be left up to the legislature.

Eleven years ago, our legislature required that all new passenger vehicles manufactured or assembled after January 1, 1968, be equipped with a seat belt for all passenger seating positions. K.S.A. 8-1749. In 1984, the legislature required every parent or legal guardian of a child under the age of four to provide a proper passenger safety restraining system while transporting the child in the front seat area of the automobile. K.S.A. 1984 Supp. 8-1344.

This court has recognized the general rule that one must use reasonable diligence to mitigate one's damages once the

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A-2

risk is known. *Atkinson v. Kirkpatrick*, 90 Kan. 515, 135 Pac. 579 (1913). No one can deny that seat belts are placed in an automobile to protect the occupants of the vehicle from a known risk. In addition to the seat belt, devices to remind the occupants to use the seat belt are required to be installed, and the operator's manual furnished by the manufacturer states the hazards of failure to use a seat belt. The failure of an occupant of an automobile to use a seat belt should be a factor relevant to an appraisal of the occupant's duty to anticipate peril and should apply to the percentage of fault as required by our comparative negligence statute. Where safety standards are set by our legislature, the failure to exercise the standard of safety should be relevant to the issue of negligence and admissible into evidence.



**KANSAS BAR
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SB 520

House Transportation Committee

March 18, 1986

Mr. Chairman. Members of the House Transportation Committee. I am Ron Smith, Legislative Counsel for the Kansas Bar Association.

KBA represents 4,300 of the state's 5,900 attorneys. We support SB 520 as an appropriate public safety issue because we believe the public safety aspect is very important.

Opponents may indicate Thursday that unless SB 520 has a provision allowing mitigation of damages, SB 520 will not be in compliance with the Federal mandate. KBA prefers that such language not be written into SB 520 because while the Federal Supremacy Clause might give the Federal Department of Transportation (FDOT) license to impose safety and fuel conservation requirements on the states (such as the mandatory seat belt law and 55 mph speed limit) we are not sure it is appropriate for federal administrative agencies to require states to make changes in our rules of civil procedure and negligence laws not mandated by Congress.

*H. Transp. 3/18/86
Attach. 3*

Regarding the floor amendment in the Senate by Senator Frey, (Lines 66-68) which specifically indicates that nonuse of the seat belt cannot be used to mitigate damages or compare negligence, two recent Kansas Supreme Court cases raise counterbalancing questions.

I've enclosed a copy of the Kansas Supreme Court's latest ruling on the issue of whether nonuse of seat belts was negligence absent a statutory provision imposing a duty to wear the belt. This case, Rollins v. Department of Transportation, ____ Kan ____ (Dec. 1985) gives a history of our general rule. It states:

"For there to be fault assessed in a negligence action there must be some duty which has been breached, and as there is no duty to use seat belts in Kansas, there can be no fault attributed to a person for failure to use them." (p. 5)

Last summer, however, in a case where litigants asked the Court to create a dram shop rule of liability of a for-profit seller of liquor whose sale leads ultimately to an accident and injuries by plaintiff, in Syllabus #4 the Supreme Court said:

"Breach of a duty imposed by law or ordinance may be negligence per se, unless the legislature clearly did not intend to impose civil liability. KSA 41-715, which prohibits the dispensing of alcoholic liquors to certain classes of persons, was intended to regulate the sale of liquor and was not intended to impose civil liability. Thus a liquor vendor's violation of KSA 41-715 is not negligence per se." (emphasis added) Ling v. Jan's Liquors, 237 Kan. 629 (1985)

It would be inappropriate for me to guess how the court might interpret Senator Frey's amendment, in light of Ling. The policies in Ling and Rollins appear to be at variance with each other.

Regardless, KBA believes the important thing about SB 520 is that people will use their seat belts. Those that refuse to buckle up, just as they refuse to obey the 55 mph speed limit, will continue to be hurt, but from a public safety viewpoint, the law is desirable.

KBA supports the bill.

TESTIMONY CONCERNING SENATE BILL 520
BEFORE THE HOUSE TRANSPORTATION COMMITTEE
PRESENTED BY BOB W. STOREY
REPRESENTING TRAFFIC SAFETY NOW, INC.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Bob Storey, and I represent Traffic Safety Now, which is a nonprofit corporation organized to save lives and to prevent injuries. Some representatives of the ownership in the corporation are:

Kansas Highway Users Conference
American Association of Automotive Medicine
Kansas Engineering Society
National Automobile Dealers Association
Motor Vehicle Manufacturers Association
of the United States, Inc.
Chrysler Corporation
Alliance of American Insurers
American Seat Belt Council
Ford Motor Company
General Motors Corporation

Before you today is Senate Bill 520, which may be commonly described as mandatory safety-belt legislation. Attached as Exhibit 1 is a representative list of organizations which support the mandatory safety-belt legislation. I would like to point out briefly some of the provisions of Senate Bill 520 and some of the Senate amendments and the effect of those particular amendments.

H. Transp. 3/18/86
Attach. 4

The bill provides that it shall be mandatory for any driver of a vehicle, and also for any passenger located in the front seat of a vehicle, to engage their safety belts before the vehicle is in operation, and to wear them at all times while the vehicle is being operated on the streets, roads, or highways of the state of Kansas. It should be noted here that the bill speaks only to passenger automobiles which are not on a truck chassis, and which are capable of transporting only 10 or fewer persons. It has been determined that pickups and other trucks and/or farm vehicles are not involved in the legislation. In addition, the bill provides for an educational program to be set up by the Department of Transportation to educate our citizens in the use of safety belts. It also provides for a fine of \$25.00, including court costs, for any violation of this act. The bill further provides that any violations under this act shall not be reportable to the Kansas Department of Revenue. This means that any violation would not be counted as a moving violation against an individual's driver's license. Nor would such a violation be placed on an individual's motor vehicle record for the Department of Revenue, which is accessible to insurance companies in developing ratings for those persons who purchase liability and collision insurance. In effect, this would mean that an individual's insurance rate could not be raised because of violations of the mandatory safety-belt law.

The Senate felt there was no reason that a front-seat rider in a taxicab or limousine should be exempt from the mandatory safety-belt law, and TSN, Inc. feels the same way. The

new amendment on page 1 offered by the Senate would exempt the carriers of United States mail and newspaper delivery persons. It is fairly obvious that those two categories would have a tough time complying with a mandatory safety-belt law, since normally those persons sit on the wrong side of the vehicle.

In addition, on line 52, page 2, this amendment was offered in the Senate Transportation and Utilities Committee. What it does is provide for what we call a "secondary offense." In other words, a law enforcement officer could not stop a vehicle merely to check to see if safety belts were being worn. The only way that the law could be enforced would be if a vehicle were stopped for another violation; then a citation could be issued in case a safety belt was not being worn. TSN, Inc. again is in favor of this amendment.

Lines 57, 61, and 62 of page 2 show that the bill was amended on the floor of the Senate to provide that the effective date of the act will still be upon publication in the statute book on July 1, 1986. However, there could be no traffic citations imposing a fine issued to an individual for violation of the act until July 1, 1987. Up until that time the person who violated this particular act would be subject only to a warning ticket. Further, the bill states that from and after July 1, 1987, a person could be fined not more than \$25.00, including court costs. The reason for this amendment is to give the citizens of the state of Kansas an opportunity to be educated on the wearing of safety belts. It has been proven in other states

which have had this particular law, and more specifically this amendment, that after a year's educational program the public has become aware of the benefits of wearing safety belts and the transition into mandatory safety belts has been very painless. Again, TSN, Inc. endorses this amendment.

The last amendment appears on line 66 of page 2 of the statute. Although this amendment was not opposed by TSN, Inc., there are some ramifications that I should briefly discuss which could become important in a court of law. As you have seen on the list of supporters, the Kansas Bar Association, the Kansas Defense Counsels, and the Kansas Trial Lawyers Association all endorse this bill without subsection (c) on line 66 on page 2. After checking with the associations, all three of the attorneys' associations still support the bill with or without the language contained therein. The problem with the language contained on line 66 of page 2 is that in our law in the state of Kansas, whenever there is a prohibitive act, the judge instructs the jury that the particular act is prohibited by law and can be used to compare the negligence of a plaintiff in a lawsuit against a defendant. In the instant case, for example, without subparagraph (c) on line 66 of page 2, if a person were involved in an accident and was not wearing a safety belt, if that could be determined, then the judge would most likely give instruction to the jury that the jury could compare the negligence of the plaintiff against that of the defendant for not wearing a safety belt. As I said before, that is the way the law operates within the state of Kansas in our comparative negligence statutes.

Originally, the bill had the provision that a defendant could use the nonwearing of a safety belt by a plaintiff to mitigate damages in a court of law. That provision was taken out, because quite frankly TSN, Inc. and the other supporters do not think it is necessary. With the mitigation in the bill, it was opposed by the Bar Association and the Trial Lawyers. After the affirmative language of mitigating damages was removed, then all the attorneys endorsed the bill, but still support the bill without objection to (c) on line 66 on page 2. One of the concerns is that the Supreme Court of the State of Kansas might find the law unconstitutional, simply because it is going against the common law and case law of the State of Kansas in not allowing a judge to issue an instruction to a jury concerning comparative negligence, as there is a prohibitive statute. TSN, Inc. would feel more comfortable with that provision being out of the bill so it could stand the court test. However, if we do not oppose that amendment and if in fact that language remains intact, we certainly believe it is not needed to carry out the letter of the law.

Those, in brief, are the main points of the legislation. Now I would like to give briefly the reasons that the organization I represent, and its supporting organizations, are here, asking you to look favorably upon this legislation.

Traffic Safety Now, Inc. is dedicated to passing a mandatory safety-belt law in all fifty states in the Union, or at least to doing everything within its power to reach that goal.

I know many of you have heard of the federal mandate of Secretary of Transportation Elizabeth Dole made in 1984, who said that if states covering two-thirds of the population do not have a mandatory safety-belt law by 1989, then the automobile industry will be forced to manufacture their automobiles with air bags. However, I hope the members of the committee here realize that this is not the primary reason for the introduction of the mandatory safety-belt law in the state of Kansas, or in any other states. The plain fact is that the mandatory safety-belt law is to educate individuals to use safety belts, and to train minors who ride in automobiles to use safety belts. Such a law can save lives of thousands of persons, any of whom may be your friend or relative.

As of today, 21 states and the District of Columbia have passed mandatory safety-belt laws. I will not take the time in this written testimony to spell out the startling statistics in those states which have implemented a safety-belt law and their data can now be taken. However, in the packet you have before you, supplied by the Kansas Coalition for Safety Belts, please take the time to read the statistics. They include figures to show how many lives have been saved and how much mutilation has been prevented by mandatory safety-belt legislation.

Also, I feel a compelling need to point out a story which appeared in the Detroit Free Press of January 7, 1986 (copy attached as Exhibit 2), since in my opinion that relates a historic moment as to the effectiveness of safety belts. Radio

operator Ron Foster reported on Monday morning January 6 that for the first time in 10 years there were no deaths during the first weekend of the new year. Lieutenant James Downer of the Michigan State Police operations division commented:

I would say this probably wouldn't have occurred without a seat belt law.

I feel, too, that this probably would not have occurred without a safety-belt law. This dramatically depicts what a mandatory safety-belt law has done in the state of Michigan, and can do in the state of Kansas.

Saving of lives, we believe, would be sufficient reason to pass a mandatory safety-belt law in this state. However, we know there are some arguments you will hear against mandatory safety-belt legislation.

The only known opposition today to a mandatory safety-belt law in Kansas is from those who believe such a law would be an infringement upon a right or a constitutional right. Those persons believe that if they want to injure, maim, or kill themselves, it is their right to do so and the state should not intervene with that right.

Obviously this is a fallacy. As recently as December 1985, Lancaster County Judge Donald Endacott ruled in Nebraska that the right to drive an automobile is a privilege granted by a state, and not a constitutional right, and for that matter not any type of a right; and that this privilege may be taken away at any time, or may be restricted, depending upon the state legislature's decision to pass certain laws relating to driving

an automobile in a given state. The Judge also addressed the argument that a person who refuses to use safety belts jeopardizes no one but himself. Society incurs costs when a person is injured because of failure to use a safety belt. The Judge stated in the decision, and I quote:

These include the direct costs of law enforcement investigations at the scene of the accident, emergency medical treatment at the scene, transportation to the hospital, care and treatment in the hospital and after-care. Also included are indirect costs such as loss of productivity, public welfare, loss of income taxes and rehabilitation.

A copy of the article in the Omaha Herald on December 14, 1985, setting out this decision is attached hereto as Exhibit 3.

This legislature has passed laws restricting an individual's right to drive an automobile if that individual has sustained three or more moving violations in one year; if that individual has been convicted of driving while under the influence of drugs; if that individual is driving while his license is suspended; and in many other instances. There is no question but that the legislature has the right to pass a mandatory safety-belt law, stating that those individuals who drive without the use of safety belts are in violation of the law and may receive a citation for abusing that particular law.

In this same vein, we must point out here that even though an individual enjoys certain rights in this state and in our country, the law has fallen short of condoning the right of any individual to injure himself intentionally or to commit suicide. Therefore, we do not believe it is an individual's right to choose whether he wants to protect himself, since the

Congress of the United States and all state legislatures are bound to promote the health, welfare, and safety of each individual under their jurisdiction.

There is one additional and stronger argument against the assertion of an individual that he or she has the right to injure, maim, or kill himself or herself, and that the legislature should not intervene with that right. We all are aware of the tremendously high and rising medical costs attributable to every individual in the state of Kansas and the United States. Again, this was pointed out distinctly by Judge Donald Endacott in Nebraska in the ruling which is attached hereto as Exhibit 3. As stated in the Medical Tribune of Wednesday, December 4, 1985 (copy attached as Exhibit 4) and in "A Position Statement" of the American Academy of Orthopaedic Surgeons published in Chicago in 1985 (copy attached as Exhibit 5), a large amount of the rising health costs is directly related to those individuals who receive injuries which are very costly in hospital and doctors' bills, which injuries could have been prevented by the wearing of safety belts. If the law were mandatory, then we firmly believe, as has happened in other states, that its being mandatory would educate individuals to the use of safety belts at all times on the streets, roads, and highways of our state. Use of safety belts certainly could result in a reduction of health care costs and a great savings to all of our citizens.

One of the most difficult problems we in Traffic Safety encounter is negating the argument that a state should not impose

mandatory sanctions on those who drive automobiles in the state. However, the very nature of the motor vehicle laws of the State of Kansas dictates that the legislature could, should, and does impose sanctions on all persons driving an automobile, and almost without exception those laws are implemented for the safety of our citizens. It is very difficult for one to understand then why a mandatory safety-belt law, which would prevent thousands of deaths and injuries, should not be implemented by the legislature. In fact, we could presume that it would be a duty of this legislature to protect lives if at all possible, and it certainly is possible by the implementation of this act.

I am sure that by now you have heard the argument that if in fact a mandatory safety-belt law saves lives, then why doesn't the government require individuals to have blood tests, blood pressure tests, electrocardiograms, etc. That argument, although it may seem sound to those using it, cannot be sustained. We are talking about two completely different things. It always has been the right of an individual, if not incapacitated, to decide whether he or she would seek a physician's assistance to maintain good health and a good physical appearance. It is still an individual's right to ruin his or her health, if so desired, by not seeking proper medication or a physician's care. In the instant case, we are talking about things required in operating a vehicle on the highways of the state, and in the cities and counties of Kansas, which in no way relate to the personal health of an individual. You will note, however, that we have not gone so far in our law

as to say that an individual who is incapacitated has a right to ask a physician to inject a lethal dosage to terminate his or her life. Since that is still against the law, a physician will do everything within his or her power to save the life of one who is considered terminally ill. As a matter of fact, as in the Karen Quinlan case, one who is in a coma is most likely to stay in a coma for years. As you know, the courts would not let the life of Karen Quinlan be terminated, even though her parents desired that end result. This means, of course, that one does not have the right to terminate his or her own life, even though we are guaranteed other liberties by the Constitution of the United States and the State of Kansas.

The Constitution of the United States and the Constitution of the State of Kansas give us the right to life, liberty, and the pursuit of happiness. I don't believe that any of these constitutional liberties infringes upon the state's right to impose a mandatory safety-belt law upon an individual, in order to prevent death or serious injury to that person or to other persons because of not wearing a safety belt. The state certainly has a right to pass this law on behalf of the health, education, and welfare of its citizens, and thereby curb the rising cost of health insurance.

You will hear testimony from individuals whose lives were saved, or who were saved from serious injuries, by the use of safety belts. These certainly are testimonials as to what a mandatory safety-belt law can and will accomplish.

I am sure you also will hear arguments that the law is unenforceable. However, I can only say to you that if a law enforcement officer stops an automobile because the driver or a passenger in the front seat of that automobile is not wearing a safety belt, then it certainly is enforceable by the issuing of a citation. Bear in mind here that the purpose of this law is not to punish people for not wearing safety belts, but to make them aware of the importance of a safety-belt law, and to educate adults and minors to use their safety belts at all times while operating a vehicle.

You also probably will hear the argument that some of the 21 states and the District of Columbia which have passed the bill are going to repeal the legislation. This is simply not true. I agree with you that some of the states which have implemented mandatory safety-belt laws now have bills up to repeal the same; but after checking with the state of Missouri, the state of Nebraska, and certain other states, I find there is absolutely no strong push to repeal any of the safety-belt laws. These repeal bills have been drafted by individuals who did not support the mandatory-safety belt law in the first place. Either they have drafted a repeal bill to satisfy themselves, or did so on behalf of a few of their constituents who told the legislator that they oppose the safety-belt law. A good example is Nebraska. A referendum as to whether or not to repeal the mandatory safety-belt law is set for November 1986. An independent poll taken by the Lincoln Star, a copy of which is attached as Exhibit 6, shows that if a poll were taken now, 61%

of the voting population would vote to retain the safety-belt law, and only 36% would vote against. In contrast, the poll also shows that in November 1985, before the law was well under way, 51% would have voted in favor of retaining the legislation and 46% against. This is what the safety-belt legislation is all about. This clearly shows that once the law has been implemented and people learn to use their safety belts, and they see how much good is being done in the saving of lives and prevention of serious injuries, they accept the mandatory safety-belt legislation. Nebraska will be no different from any of the other states; and I would venture to say that the odds on the safety-belt bill being repealed in any state at this time are very minute.

After all, it takes only a few seconds to buckle a safety belt. In contrast, sometimes it takes weeks, months, years, or an eternity to recover from an injury or death which occurs because of the nonuse of safety belts.

Traffic Safety Now and all of the supporters of this legislation appearing before you in these hearings urge you to recommend the passage of this bill to the full Senate, with the recommendation that it be passed and sent to the House of Representatives. This will show the states that have passed mandatory safety-belt laws that we are in complete agreement with their action; and will show those states that have not passed such a law, that we recommend strongly they act for the benefit of all of their citizens.

Thank you for your consideration.

Respectfully submitted,

BOB W. STOREY

ORGANIZATIONS THAT SUPPORT SENATE BILL 520

Kansas Association of Defense Counsel
Kansas Automobile Association of America (AAA) *
Kansas Bar Association
Kansas Trial Lawyers Association
Kansas Chamber of Commerce and Industry*
Kansas Department of Transportation
Kansas Engineering Society*
Kansas Farm Bureau*
Kansas Head Injury Association
Kansas Highway Patrol
Kansas Highway Users Federation*
Kansas Independent Insurance Agents*
Kansas Medical Society*
Kansas Motor Carriers*
Kansas Motor Car Dealers*
Kansas State Nurses' Association*
Kansas Parent Teachers Congress (PTA) *
Kansas Silver-Haired Legislature
Kansas Women for Highway Safety*
Mothers Against Drunk Driving (MADD)

*Members of the Kansas Coalition for Safety Belts

Detroit Free Press

Section A, Page 3

SECOND FRONT PAGE

Tuesday, January 7, 1986 ••

DETROIT FREE PRESS/WEDNESDAY, JAN. 8, 1986

We all came back alive

SOMETHING extraordinary happened last weekend in Michigan. Actually, it's what didn't happen. No one was killed in a highway fatality, some of the worst weather yet this winter notwithstanding. To what do we owe this happy statistic? Police officials say it is probably a combination of two factors: the state's seat belt law, which people are actually taking seriously, and the aftereffects of one of the more sober New Year's celebrations the state has known in a long while.

Stricter enforcement of drunken driving laws and a raised consciousness on the part of bar owners and patrons has cut down considerably on alcohol-related road accidents and deaths. So evidently Michigan residents are getting the idea that an automobile is not a plaything for a drunken lark and that mandatory use of seat belts is not the curse of a tyrannous government.

Detroit Free Press 1/7/86

1st in 10 years: No deaths on state highways

By RUTH SEYMOUR
Free Press Staff Writer

When Lt. James Downer walked into the Michigan State Police operations division in Lansing on Monday morning, Radio Operator Ron Foster just grinned at him.

On other Monday mornings, Foster had handed over a grim report describing the deaths of Michiganders in weekend auto accidents.

But this Monday was different: There were no deaths for the first weekend of 1986.

It was the first time that has happened in at least 10 years, Downer said.

"I would say this probably wouldn't have occurred without a seat belt law," he said.

He said the average number of traffic deaths each weekend is eight or nine. Between 1,500 and 2,000 Michiganders a year die in auto accidents. The state has 6,200,076 licensed drivers, he said.

Omaha Herald 12-14-85

Judge Clarifies the Argument By Upholding Seat Belt Law

Lancaster County District Judge Donald Endacott, in ruling that Nebraska's automobile seat belt law is constitutional, helped clarify the issues in the campaign by opponents of the seat belt law who want Nebraska voters to repeal the law next November.

Endacott methodically put down the arguments used by opponents who say the Legislature unconstitutionally exceeded its authority when it required motorists and front-seat passengers to use seat belts.

Driving is a privilege, not a basic right, Endacott said. Consequently, the Legislature has the power to establish regulations for the exercise of that privilege. Endacott, addressing other contentions, said the seat belt law is not unreasonable, is not arbitrary and does not improperly delegate legislative authority to the federal government.

Opponents have argued that the seat belt law is a violation of the civil rights of individuals who prefer not to use seat belts.

Not so, the judge ruled. "The requirement that plaintiff wear a safety belt may be inconvenient for him, but it does not deprive him of any constitutionally protected liberties, rights or freedoms," Endacott said.

He also addressed the argument that a person who refuses to use seat belts jeopardizes no one but himself. Society incurs costs when a person is injured because of a failure to use a seat belt.

"These include the direct costs of law enforcement investigations at the scene of the accident, emergency medical treatment at the scene, transportation to the hospital, care and treatment in the hospital and after-care," he said. "Also included are indirect costs such as loss of productivity, public welfare, loss of income taxes and rehabilitation."

Some opponents may decide to continue campaigning against the law by arguing that it is a violation of the individual's rights. Judge Endacott, however, deprived that argument of most of its punch.

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AI

AI STANDS FOR ARTIFICIAL INTELLIGENCE, the aim of expert physicists, mathematicians, and psychologists who seek to make computers equivalent to the human brain. Gerald Feinberg, who is a physicist at Columbia University, has asserted in his recent book, *Solid Clues: Quantum Physics, Molecular Biology, and the Future of Science*, that "once we understand any intellectual activity well enough to describe clearly what it accomplishes, then eventually we can teach computers to do it."

Ah, there's the rub. Will we ever understand important intellectual activities well enough to describe clearly what they accomplish? Even in the rare instances when we do, the problem of teaching the computer to duplicate the accomplishment is extraordinarily difficult. Witness the game of chess where, a priori, one would grant that the computer has certain advantages over the human brain. The effort to make the computer as good as, or better than, a chess grandmaster has gone on for years and still has not been achieved, although we are assured that it will take place, any day now.

M. F. Perutz, Nobel laureate in chemistry and a molecular biologist, has pointed out in *The New York Review of Books* (September 26) that "computers work about three million times faster than brains, because electric impulses travel along nerves at a mere 100 meters a second, while they travel along metal wires at nearly 300,000 kilometers a second."

Furthermore, the potential memory bank of a computer is enormous, since it can call upon multiple supplementary discs and tapes.

On the other hand, as Perutz further noted, "in a computer, each switch works as an on-off device and is normally connected to only three other switches, while each of the ten thousand million nerve cells in the brain may be connected to more than a thousand others." And this complex axonal and dendritic network, although generating electric currents, works by means of chemical neurotransmitters and their receptors.

"In short," Perutz added, "computers are electromagnetic devices with fixed wiring between more or less linearly connected elements, while brains are dynamic electrochemical organs with extensively branched connections continuously capable of generating new molecules to be used as transmitters, receptors, modulators, and perhaps also capable of making new connections."

Justice Oliver Wendell Holmes once said, "Life is a romantic business. It is painting a picture, not doing a sum. But you have to make the romance. And it will come to the question of how much fire you have in your belly."

The computer will outdo man in doing a sum and all that that implies in mathematical calculation. But the likelihood is vanishingly small that the computer will ever be able to make the romance and the fire that anses in the belly. A. S. J.

More on Seat Belts

LAST WEEK, we hailed the 16 states that have enacted seat belt laws mandating the use of this protective device by the occupants of the front seats of cars. Even in the short time this has been required, lives have been saved. Compulsory use of front seat belts in Britain was introduced in 1983 and, as noted in the *Br Med J* (291:757, 1985), "the seat belt law is saving about 400 lives a year and perhaps 5,000 casualties being admitted to hospital. This law—and the surprisingly high level of acceptance of it by the driving public—must be one of the most successful pieces of public health education ever."

Britain does not require the presence of rear seat belts in its cars. The leading article in the *Br Med J* noted: "In-depth studies of crashes have shown that one of the limitations to the protection of front seat occupants occurs in frontal collisions

when correctly belted front seat occupants are injured by unrestrained rear seat passengers. If rear seat occupants used seat belts as frequently as front seat occupants do now there would be two benefits: rear seat occupant deaths and injuries would be reduced by some 70%, and there would be a further reduction of some 6% in front seat casualties."

In any event, here in the United States, the 16 states that have enacted front seat belt laws ought to be joined by the remaining 34. And since American cars do have rear seat belts, their use should be required by rear seat passengers.

Much is said about better public health and the reduction of medical costs. There are two prime areas where these can readily be achieved—discontinuing cigarette smoking and using seat belts in the front seats and in the rear seats of cars. A. S. J.

Testing of Generics Ignores Elderly

Clinical Quote: "If the disease under study is cardiovascular disease and the drug is nitroglycerin, the FDA should not be giving that to a healthy young population, unless they are trying to work out pharmacokinetics . . . They should be studying it in the elderly. There is a range of clinical factors that have to be taken into account in evaluating a drug. Age is one. Sex is another." (Dr. Neal R. Cutler. Page 10.)



"No, middle-age spread isn't something middle-aged people put on bread."

LETTERS TO TRIBUNE

Time to Overhaul Law?

I applaud Dr. Sackler's editorials (MT, Sept. 18 and 25, and Oct. 2) on the somewhat arbitrary exemptions of generic drugs from FDA testing standards. Permit me to report another example of the FDA's bureaucratic arbitrariness.

I have a patient with Beçhet's disease. She is sensitive to sulfa drugs. Azulfidine is thought by some to be helpful. Azulfidine is sulfasalazine, which is metabolized in the gut to 5-aminosalicylic acid and sulfapyridine. I would like to give my patient the 5-aminosalicylic acid without the sulfa. Pharmacia is forced to go through an NDA to get this drug on the market although it has been given in combination for years.

In order to provide my patients with this medication I have to become a one-man testing organization. I must have a hospital board monitor this drug. I must provide the FDA with periodic reports. I must fulfill the ridiculous to help a sick girl, simply because of capricious decisions by the FDA. When I spoke to the FDA about this, the medical officer who gave me the guidelines, and who was in charge of the project, did not know the composition of Azulfidine.

Azulfidine has been given for years with a good safety record. One would think that one of its moieties could be given safely, without red tape and nonsense. After all, we are in the business of trying to help people.

I believe that the exemption of generics, and the application of rigid standards to 5-aminosalicylic acid, which has been used for years, is punitive to patients who might benefit. It is time to overhaul the law.

CHARLES HARRIS, M.D.
Toms River, N.J.

'Head in the Sand' Mentality?

After reading the positions taken by Drs. Redlener and Klinghoffer (MT, Oct. 23) on the issue of preparedness to treat casualties in a nuclear disaster—whether it be terrorism, accident, or war—I was angry and appalled.

I find it extremely presumptuous of Dr. Redlener to assume that he has "the support of doctors in this country" for his leftist-leaning, prodisarmament, head-in-the-sand mentality. Physicians are among the most conservative members of any society

and most would disagree completely with the theories of Dr. Redlener and the Physicians for Social Responsibility.

Carl Sagan's "Nuclear Winter" theory is just that—a theory. There are many eminent scientists who dispute his theory quite eloquently.

To state that nuclear war is unsurvivable and then not prepare to survive is to issue a self-fulfilling prophecy. In the vast regions of the United States with no targeted military installations there would be millions of people who could expect to survive a nuclear war, GOD FORBID—if they had adequate civil defense of home fallout shelters. Unfortunately, the Dr. Redlener's of this country have held sway over our thinking for so long that almost no one has such shelters and very few physicians are prepared to treat survivors of such a disaster.

Indeed for the most part we as physicians have abdicated our responsibility to be prepared to treat survivors of such a disaster. The Doctors for Disaster Preparedness group is much more in line with the mainstream of physicians in the United States. We need more courage to face the future, not the defeatist thinking of the PSR group.

JAMES R. UHL, D.O.
Parkville, Mo.

Danke Schon

I want to thank you for your Doctor's Children Exchange Program. It was a marvelous idea and I highly recommend you continue and enlarge it, and I also encourage my colleagues to take part.

Two of my children, ages 14 and 10, went to Germany to two absolutely wonderful families. They were welcomed and cared for like one of the family and have many happy memories.

We feel that we have established a lifelong tie with our new German friends and hope to continue it in the years to come.

Thank you again and please continue the program.

R. D. DWYER, M.D.
Houston, Texas

Short and Sweet

I am most grateful for your series of articles on generic drugs (MT, Sept. 4, 18, 25 Oct. 2, 16, 23, Nov. 6, 20, 27).

P. DAVID JARRY, M.D.
Holden, Mass.

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The Physician's Approach

THE OCTOBER 1985 ISSUE of *Cancer Treatment Reports* is devoted to a symposium on quality assurance in cancer clinical trials, which took place in Washington, D.C., almost exactly one year ago. Katherine M. Taylor, Ph.D., a sociologist affiliated with the department of behavioral science of the faculty of medicine at the University of Toronto, delivered a paper on "The Doctor's Dilemma: Physician Participation in Randomized Clinical Trials." What is of particular interest is her description of "two distinct philosophies, either experimenter or therapist, among physicians with regard to participation in clinical trials." Her analysis can prove illuminating to the practicing physician.

Dr. Taylor lists six major characteristics that serve to distinguish the philosophies.

What is the physician's perception of his primary allegiance—the individual patient or the aggregate and future patients?

How does the physician interpret medical uncertainty? "Some physicians anticipate the uncertainty inherent in most clinical decision making and choose to act, rather than refrain from acting, when the treatment of choice is less uncertain. Others, however, interpret the uncertainties in the choice of optimal treatment as a signal to begin experimental procedures to pro-

vide a definitive answer."

What is the physician's attitude towards sharing or withholding information from patients? There are those who prefer restricting the discussion of uncertainty within the profession, while others believe patients should be told about controversy and uncertainty and "encouraged to participate in decision making."

Clinical experience is looked upon by some physicians as critical in making a medical decision, "while others discard personal experience as anecdotal information of little value."

How does the physician feel about current therapy? "Some physicians adopt a conservative, traditional approach to medical practice, while others, in sharp contrast, question every procedure."

Dr. Taylor lists the final difference as "related to the physician's relationship with colleagues. Some doctors continue an individualized approach to patient care, while others are anxious to pool information resources."

It is Dr. Taylor's belief, based in part on experience, that "the decision to enter, or not to enter, patients into clinical trials is strongly related to these six factors." The experimenter tends to do so, the therapist not to.

A. S. J.

Seat Belts

MASSACHUSETTS HAS JOINED 15 other states that have a law requiring motorists to use seat belt. In New York, which was the first state to enact a seat belt law, it went into effect on January 1, 1985, and for the first month or so, drivers were only warned if they or the front seat occupants were unbelted. Subsequently, they were fined. Statistics on the effect of these laws are as yet incomplete and only indicative, but gratifying.

In New York, from January to June 1985, there were 438 motorist fatalities compared with an average of 608 for the same six-month period in the previous five years. In Illinois, where the law has been enforced since August 1, the number of car occupants killed in traffic accidents fell 27.9% in August and September, compared with the figures for these months in 1984. In New Jersey, the decline in fatalities for the first four months in which the law has been in effect has only been 13%, but that too is not to be sneezed at.

In Michigan, there was a 28% decline in fatalities during the two months the law has been enforced, equaling the percentage decline in New York. The executive

secretary for the Michigan Coalition for Safety Belt Use, Thomas O. Reel, said, "If this trend continues, we expect to save 300 lives on Michigan roads during the first year that the law is in effect, as was projected prior to the law's passing."

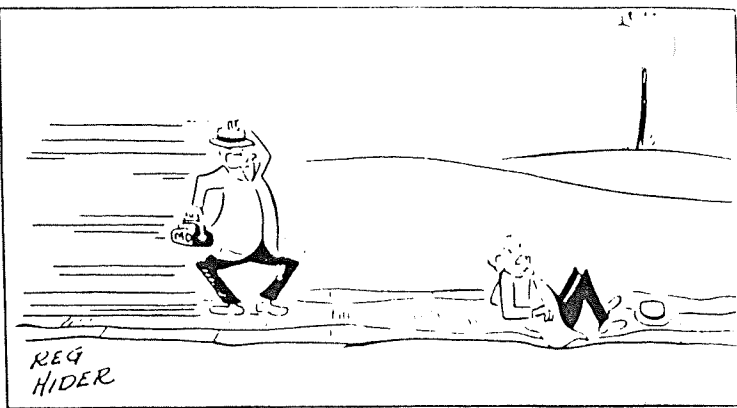
Seat belts have been around for a long time and are required equipment in automobiles. Their use, however, has not been mandatory until now and, so far, is required in only 16 states. Back in 1969, David Foster, Ph.D., an English mechanical engineer, estimated that seat belts had only a 15% utilization and made only a 5% contribution to overall reduction of auto injuries. That may well be so when usage is not mandatory. But extrapolation from Dr. Foster's estimate suggests up to a 33% reduction in auto injuries when belting up is required and its implementation is enforced. That would be a respectable figure in preventive medicine.

States with a seat belt law are New York, New Jersey, Connecticut, California, Hawaii, Illinois, Indiana, Louisiana, Michigan, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, and Texas—a roll of honor.

A. S. J.

'A Mass of Potential Problems'

QUOTABLE: "As currently evaluated, generics pose a mass of potential problems. They are, in my estimation, inherently dangerous, their use motivated only by a consideration of the costs of medical care, not the quality. I generally do not prescribe generics." (Dr. Richard C. Inskip, Page 1)



LETTERS TO TRIBUNE

'We Are Human Beings'

I am rather astounded by the comments of Dr. Kuffner in the article "For Profit Doctors Get a Piece of the DRG Pie" (MT, August 7). Dr. Kuffner is quoted as saying, "We are human beings and know the effect financial rewards have on our behavior. Why should doctors be any different?" If this is so, and I am not disagreeing with him, how can he or anyone else support fee-for-service private medical practice in any form? All physicians in private fee-for-service medical practice make patient-management decisions every day which have personal financial implications of which we may or may not always be consciously aware, but I doubt that we could honestly say that financial considerations never affect our decisions. Dr. Kuffner just may be right. It may be that we should eliminate all private fee-for-service medicine and that any physician who is not interested enough in medicine to work for a fixed predetermined salary might better choose another occupation.

Leo J. Yoder, M.D.

National Hansen's Disease Center
Carville, La.

United States!

Finally, I ask Dr. Birnbaum and others who support abortion this question: would you have supported the "right" of your mother to abort you before you were born?

DONALD A. ROSE, M.D.
La Grande, Ore

Medical Profession's Ills

I was quite pleased with your publishing of Dr. Harris' open letter to Senator Bradley (MT, Oct. 2).

Dr. Harris, in a very remarkable and professional fashion, has summed up the ills of the medical profession, not only in New Jersey, but nationally. His description and discussion of the facts, sometimes satirical, are only too true. The PSROs and other regulatory agencies add to the cost of the medical care but also add to the frustration of the physician attempting to conform to the system.

I would be happy to see a response to this article from Senator Bradley and other legislators in the metropolitan area. I think the publishing of this letter was not only timely and informative, but also necessary.

CLIFFORD W. TOLIVER, M.D.
East Orange, N.J.

Legal Slaughter?

In reply to the letter of Dr. Michael D. Birnbaum (MT, Oct. 16), "Return to Criminal Abortions?" I would like to make several comments.

Dr. Birnbaum believes in personal freedom and that "a woman should have the right to make her own reproductive choices." My question to that is: Doesn't the unborn baby have any freedoms—even life?

He mentioned that women have been mangled by criminal abortionists, which is true. It is also true that morbidity (physical and psychological) and mortality follow "legal" abortions. Furthermore, the fact that children and adults are murdered by criminals doesn't justify their murder at "legal" slaughter houses by "legal" slaughterers instead.

Dr. Birnbaum cites complications of criminal abortions by the mid-'60s as "a leading cause of maternal deaths." As bad as maternal deaths are, they don't even approach the more than 700,000 deaths of future mothers in each year that abortion has been "legal." In 1985, abortion accounts for 1.6 million deaths per year, the largest cause of death of any type in the

Criteria for 'Humanness'

Dr. Willke's criteria for humanness set forth in a letter (MT, Sept. 25) commenting on Dr. George Crile's article "When Does Human Life Begin," (MT, March 6) seem to include the possession of 46 chromosomes. Where does this leave those with XO (Turner's syndrome), or XXY (Klinefelter's syndrome) creatures?

How will we classify an organism with some genes that originated in a different class of organism? Some day we will surely have such, if genetic research and therapy progress much further.

How about the future experiment in which a human being can be cloned from a piece of skin? Does not every cell in the body have the potential to become a human being? Doesn't every cell have all the genetic information needed? Will we then forbid any procedure which destroys any cell anywhere in the body?

Seriously, folks, this is where your hatched, half-blind arguments are leading you.

BROOKS A. MICK, M.D.
Findlay, Ohio

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American Academy of Orthopaedic Surgeons

"A Position Statement"

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Contact: William H. Spelbring

THE AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS STRONGLY ENDORSES THE VIEW THAT ALL MOTORISTS SHOULD BE REQUIRED BY LAW TO WEAR SAFETY BELTS.

Data from the National Safety Council showed that in 1932 there were 46,000 fatalities from motor vehicle accidents and 1.7 million disabling injuries at a cost to this country of 41.6 billion dollars. The Council further estimates that by 1990 an additional 100,000 front seat passengers will die because of failure to use safety belts currently available. About 70 percent of all motor vehicle accidents occur within 25 miles of home and more than 80 percent occur at speeds under 40 mph.

For more than two generations motor vehicle accidents have been a major cause of death and injury for the youth of this country. The safety belt is the most effective safety device available to every motorist because it prevents the second collision; the collision of the occupant with the inside of the vehicle. To be effective, however, the seat belt must be buckled around the person. There have been no reported medical contraindications to safety belt usage. The risk of injury for pregnant females and for motorists with arthritis, osteoporosis, stiff joints or any other medical condition is greater if safety belts are not used. While it is true that a few injuries have been reported attributable to seat belt use, review of the statistics gathered over the past years makes it quite clear that the risk of injury from wearing seat belts is far less than the benefits.

Safety belts, by holding the occupant within the vehicle, prevent virtually all ejections. Ejection from a crashed vehicle increases the risk of fatal injury ten times and accounts for more than 25 percent of all motor fatalities. The head and chest, the most frequent sites of fatal anatomic damage in motor vehicle accidents, are protected by safety belts. Safety belt usage costs the motorist nothing but a little thought yet provides maximum crash protection.

Since 1967, federal law has required that all cars and light trucks sold in the United States be equipped with safety belts but, tragically, they are used by only 13 percent of motorists. Educational campaigns over the past 20 years, utilizing the most sophisticated educational and communication methods, have failed to convince motorists that it is smart to take their lives in their own hands and fasten the safety belt. Among developed nations, only the United States does not require safety belt usage by law. The Australian state of Victoria was the first local government to require safety belt usage in 1970. Since then the governments of 30 countries have required safety belt usage, with compliance of 50-90 percent being achieved. In the Canadian province of Ontario, motor vehicle deaths have been reduced by 40 percent and serious injury by 67 percent with a compliance rate of between 50-55 percent.

Traffic accidents in the last three years have killed more Americans than died in Vietnam and Korea. Clearly, highway carnage is a problem of great consequence for this country and must be attacked by a combination of mandatory safety belt legislation and a thoughtfully conceived and implemented educational campaign.

THE AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS STRONGLY ENDORSES THE DEVELOPMENT AND INTRODUCTION OF PASSIVE PROTECTION SYSTEMS AS AN ADJUNCT TO A SAFETY BELT USAGE LAW.

Passive restraints have been available in this country since 1973 and provide crash protection comparable to that provided by safety belts. Passive restraints are automatic, do not require active compliance by the motorist and automatically function in the event of a crash. The air bag is the most publicized passive restraint but current availability is limited to just one luxury car model. Maximum passenger protection is provided by the combination of a lap belt and the air bag restraint. Automatic safety belt systems have been available since 1975 in one inexpensive small car. Further passive protection through improved dashboards, windshields, steering wheels, door and seat designs is an achievable design objective and is being incorporated in most newly designed vehicles. The obvious advantage of passive restraints is that motorists persisting in not using safety belts, despite a usage law, will still benefit from passive protection systems.

THE AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS BELIEVES ALL HEAD RESTRAINTS SHOULD BE OF A FIXED DESIGN.

A fixed design would provide automatic head restraint protection and require no adjustment by motorists. Head rests have been mandated by federal law since 1960 and have been instrumental in reducing both the frequency and severity of hyperextension neck injuries. Approximately 70 percent of cars in this country have adjustable head rests but only 30 percent are properly adjusted to protect the user. Proper adjustment requires elevating the head restraint to the height of the occiput of the skull. Only the shortest motorists (62 inches in height or less) are protected with the head rest in the downmost position. Fixed head restraints, however, do not require adjustments and will protect all occupants up to the 95th percentile in height.

THE AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS BELIEVES THAT ALL MOTORISTS WHO TRANSPORT CHILDREN SHOULD INSTALL AND USE CHILD RESTRAINTS AND IT URGES MANUFACTURERS TO SIMPLIFY AND IMPROVE THE DESIGN OF CHILD RESTRAINTS TO FACILITATE THEIR USE.

Child restraints are now required in the majority of the United States. Child restraints provide children with the same degree of crash protection available to adults using safety belts. Recent studies show, however, that three-quarters of child restraints are not properly used. Common faults such as improper attachment of the restraint to the vehicle or improper buckling of the belt within the restraint can result in injury to a restrained child. Significant improvement in child restraint design is possible and would facilitate proper use.

MANDATORY SAFETY BELT USAGE, FIXED DESIGN HEAD RESTRAINTS AND SIMPLIFIED CHILD RESTRAINT SYSTEMS WOULD BE THE MOST COST EFFECTIVE MEASURES THIS COUNTRY COULD ADOPT TO PREVENT FURTHER NEEDLESS DEATH AND INJURY FROM MOTOR VEHICLE ACCIDENT.

The Lincoln Star

Thursday, February 27, 1986

Poll shows support of seat belt law up

61% would keep it if vote held today

By Bruce Weible
of The Lincoln Star

Nebraska's controversial seat belt law is gaining support, according to a poll conducted recently for The Star.

It showed 61 percent of Nebraskans surveyed would vote to keep the law if a referendum scheduled for November were held today. Thirty-six percent said they would vote against the law.

The poll, which sampled 449 Nebraskans from Feb. 14-19, was conducted by Research Associates of Lincoln. It has a confidence level of 95 percent, meaning that if the poll were repeated 100 times, the results would fall within the stated accuracy range 95 times. The accuracy range is plus or minus 4.6 percent.

A SIMILAR POLL, conducted in November, showed 51 percent of Nebraskans for the law and 46 percent against it.

Bob Corner, program coordinator for the Nebraska Highway Safety Office, said a deluge of publicity following the passage of the law has resulted both in greater support for it and in more widespread use of restraints.

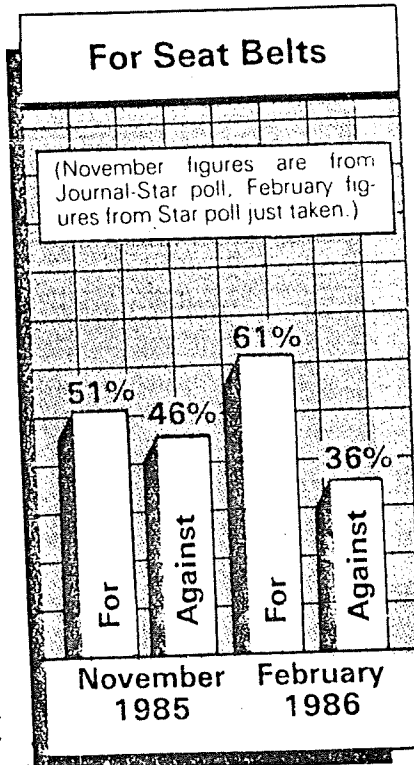
He said highway safety officials have sponsored educational programs on safety belts since the mid-'60s. Two decades of such programs, prior to the law's passage, convinced only 11 percent of Nebraskans to wear restraints, he said. Less than a year after mandatory seat belt use became law that number has increased fivefold, he said.

"For a logical person . . . the only conclusion you can come to is you're better off with the law," Corner said.

Robert Cashioli, attorney for Citizens Against Mandatory Seatbelts, agreed with some of Corner's comments.

Cashioli said support for the law may be increasing because people are discovering wearing seat belts is not a great inconvenience.

He said the poll may indicate that his group will have to make a greater effort to stress it does not oppose the law on the basis of any inconvenience involved in wearing restraints.



Cashioli said his group opposes the law because of "a lot of inherent problems" in the manner in which it is written and implemented.

It is also "too much of an intrusion on privacy," Cashioli said.

HE SAID the financially strapped anti-seat belt law movement will not give up if support for the law continues to grow. However, the amount of resources devoted to the effort may be reduced if future polls indicate the law's supporters have obtained an overwhelming margin, he said.

The Research Associates poll indicated that sentiment about the law is similar among nearly all segments of the state's population.

Democrats, Republicans and independents supported or opposed the law in approximately the same proportions.

The difference in support on the basis

Turn to: Seat belt, Page 7

From Page 1

Seat belt

of age was within the poll's margin of error. Nebraskans aged 18 to 29 supported the law by approximately the same percentage as those 65 and older.

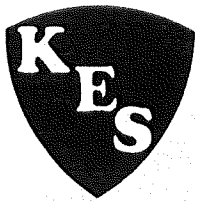
The only significant splits in levels of support on the issue seemed to be based on geography and gender.

Female respondents supported the law by 66 percent to 29 percent. The margin was closer among males surveyed — 56 percent in favor and 42 percent against. Corner said the difference is probably less attributable to a masculine anti-seat belt bias than some people believe.

CORNER SAID women tend to spend more time driving with children. Women are reminded to use seat belts when they strap infants into child restraint devices, which are also required by law, he said.

Women are also concerned about setting a good example for older children by wearing restraints, he said.

Opposition to the law was greater in the state's 3rd Congressional District, which includes some of Nebraska's most rural counties.



Kansas Engineering Society, Inc.
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Topeka, Kansas 66601 (913) 233-1867

Testimony before the Kansas House
Transportation Committee
March 18, 1986

Mr. Chairman, members of the committee I am Bill Henry, Executive Vice President of the Kansas Engineering Society, and Coordinator for the Kansas Safety Belt Coalition. I appear before you today in support of S.B. 520.

A little more than two years ago a number of different Kansas organizations and associations came together based upon a common purpose—that purpose being to promote the use of seat belts in Kansas.

Each organization, and a list of those who participate as coalition members is enclosed in your red folder, that independently arrived at its own position on this issue. I can assure you no major automobile company from Detroit called up the Kansas Engineering Society and ask us to take a position on mandatory seat belts.

As most of you know, professional engineers are a relatively conservative group. The members of our society lean to a minimum of meddling in citizens' activities by government. But as individuals familiar with technology and what technology can do we also would be the first group to realize that significant portions of the cost of automobile accidents are being borne by government for those persons unable to pay those costs associated with the accidents they have. These same accident costs are reflected in the costs of doing business as well as the automobile insurance premiums all of us pay today. Because of these financial interests that we as individual engineers have in meeting these costs we conclude that government has a sufficient enough monetary stake in this matter to be justified in passing mandatory seat belt legislation.

Secondly the engineers of the state of Kansas feel a seat belt act is the best safety bargain we can possibly buy. The cost of the program would minimal, because almost all cars have seat belts, and the enforcement costs would be almost negligible. Finally, despite excellent education efforts motorists still have yet to buckle up in significant percentages in this state.

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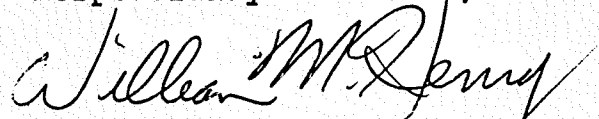
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Another reason from the engineering viewpoint why we support a seat belt act is that seat belts assist the vehicle occupant in all types of accidents. Air bags, as will be explained to you in further detail later, by other members of the coalition, are effective in frontal collisions only. Seat belts protect the occupants of the vehicle from all types of collisions, from the side and the rear. In addition they would also make any air bag installations more effective by preventing "submarining" on frontal hits and maintaining the front seat occupants "on line" with air bags in quartering frontal hits.

One subtle point in support of seat belt useage is that the driver's control of the vehicle can be substantially increased if the driver is belted. Imagine skidding in a curve path so that the unbelted driver is hurled to the passenger's side of the automobile. Two things occur here. The first is obvious, the driver can't even reach the brake pedal, let alone steer the car to avoid a tree, a ditch or another vehicle. The second danger occurs in the fact that the driver in being thrown away from the wheel can be thrown against another individual rendering both driver and that individual incapacitated or so stunned there is no possible way to regain control of the motor vehicle. The belted driver will stay right behind the wheel and the brake pedal.

Because of the above reasons the Kansas Engineering Society hopes this committee will study S.B. 520 objectively and recommend it favorable for passage.

Respectfully submitted,



William M. Henry
Executive Vice President
Kansas Engineering Society

TO: The House Transportation Committee Members
FROM: Candy Norwood, Lecompton, KS
RE: Testimony for a Mandatory Seat Belt Law

My daughter, Kelli, and I are both charter members of the Kansas Saved by the Belt Club. I wanted to tell you about the accident we were involved in as evidence that seat belts do save lives.

This accident happened a year and a half ago. Kelli was five years old and I had just picked her up at the babysitters and we were headed home. I was making a left turn off the highway onto a gravel road when a car broadsided us - on the driver's side - spinning our car around 180° and throwing the car into a ditch. Neither Kelli nor I have any memory of the collision itself. We didn't hear the screeching tires, the car slamming into us, the glass shattering - and we don't remember the car spinning around and crashing into the ditch. The first thing I do remember is sitting in the car, my hands still on the wheel, and a young man at the window asking if we were all right. I said - I'm fine, how are you? I'd smacked my head against the door frame. It wasn't until Kelli began to cry in the back seat that my head started to clear and I realized what happened. The other driver explained that he was trying to pass and I guess he thought he could get around me before I made my turn. (He said later that he was in a hurry to get to a Royals game and he estimated his speed at 55 mph.)

He was so relieved to see that we had our seat belts on, and he told us that he had been wearing his too. In fact he was able to get right out of his car to come over and help us. He was not injured whatsoever.

I had numerous cuts on the side of my face from flying glass, bruises down the left side of my body and a fractured shoulder blade. Kelli was absolutely terrified that I was going to die - because of the blood and because I was unable to move from behind the wheel to comfort her. It was very traumatic for her. Kelli's only injury was a bruise on her hip where the seat belt had held her in place in the middle of the back seat. Kelli refused to be unbuckled and removed from the car until the police and ambulance arrived and told her it was safe to get out.

If you're like me - you never think you're going to be in an accident. You always think that you're a safe enough driver and drive defensively enough to avoid an accident. But we were hit out of the blue - we had no warning - no chance to react.

It's frightening to look back and wonder what would have happened if we'd not been buckled up. For one thing - both cars were totalled in the accident. And the inside of our car looked as though a tornado had gone through it - like everything has been picked up and set down someplace else. There was dust, glass, papers - anything not tied down - scattered throughout the car. My glasses were later found in the middle of the highway. So the force we were hit with - and spun around with - had to be great. Without the seat belt, my injuries would certainly have been more extensive. And I hate to think about Kelli's light body being flung around the inside of the car, and possibly out of it, with that kind of force. She definitely would have been seriously injured and she may never have lived to see her 6th birthday. This is my only child, the only one I'll ever have, so not buckling up is a risk we just won't take.

Kelli is very aware that she owes her life to the seat belt and she just doesn't understand why everyone isn't buckling up. There's no doubt that seat belts made a difference in our accident, and now when I read about fatalities in the newspaper, I always wonder if seat belts wouldn't have made a difference for them.

A mandatory seat belt law will result in more people buckling up and more lives "Saved by the Belt."

H. Transp. 3/18/86
Attach. 6



PUBLIC POLICY STATEMENT

Statement To:

HOUSE TRANSPORTATION COMMITTEE

RE: Mandatory Seat Belt Usage . . . S.B. 520

Topeka, Kansas
March 18, 1986

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

Mr. Chairman and Members of the Committee:

My name is Paul E. Fleener. I am the Director of Public Affairs for Kansas Farm Bureau. We are here today as PROPONENTS of S.B. 520, the proposal regarding seat belt use in passenger cars.

The farmers and ranchers in Kansas who are members of Farm Bureau adopted a resolution at the 1984 Annual Meeting of Kansas Farm Bureau supporting a seat belt use law for Kansas. They supported enactment of such a law because they believed then -- and still believe -- it will improve safety on the highways. That resolution, or policy position was reaffirmed at our most recent annual meeting - November 24-26, 1985. That resolution is as follows:

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.

*H. Transp. 3/18/86
Attach. 7*

It is our understanding, Mr. Chairman, that S.B. 520 does not require the use of seat belts in pickup trucks when a farmer may be using such a vehicle on his or her own property. We think that is proper.

We urge your favorable consideration of and support for S.B. 520.

Thank you for the opportunity to make this brief statement. We would respond to questions if there are any.

519 South: March 18, 1986

Mr. Chairman, members of the committee, I am Rosemary O'Neil, with the Topeka Support Group of the Kansas Head Injury Association. Most of you have seen me as I have been around the legislature for ten years now. I was working with Fred Allen with the Kansas Association of Counties, and it was my intention to take the position of Executive Secretary when he took his retirement.

In August, 1982, my husband and I were in a one car accident, I was thrown from the car and as a result, I received a head injury that I will have to live with the rest of my life. I had other injuries but they are not visible. The only scar from the head injury is a patch of white hair.

What it all comes down to is, I am asking you to help others like me who aren't really smart but are law abiding.

PLEASE, MAKE IT A LAW TO WEAR SEAT BELTS!

I know it will not stop deaths completely. This past year my nephew was in a one car accident and died as a result of it. The force of his crash was so great that the safety belt that he was wearing was pulled from the floor boards, so I know it won't stop accidents or save everyone. I do feel that if I had had my belt on I would not have had a head injury.

Thank you for your time, if you have questions for me, I will try to answer them.

THANK YOU!

H. Transp. 3/18/86
Attach. 8

STATEMENT
BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION
REGARDING MANDATORY USE OF SEAT BELTS

Tuesday, March 18, 1986

Re: Senate Bill No. 520

Mr. Chairman and members of the Committee, I am Pat Barnes, legislative counsel for the Kansas Motor Car Dealers Association. We support the enactment of a mandatory seat belt use law in this State. We are also here today to clarify some of the technical aspects of this particular issue from an industry standpoint.

A lot has been said about passive restraints versus seat belts. Passive restraints are not only "air bags", but this is the most common conception and type of passive restraint. Passive restraints also include automatic seat belts and shock absorbant "friendly interiors" with which some manufacturers have experimented.

Passive restraints are expensive and this expense will be passed on to the consumer of a vehicle. The existing manual seat belts are a fraction of the passive restraint cost and are already in place.

Manufacturer estimates of passive restraint costs are high. In 1985, GM estimated the cost of air bag installation to be approximately \$1,100 per vehicle. Ford estimated their air

*H. Transp. 3/18/86
Attach. 9*

bags for the driver and front seat passenger would be over \$825. Chrysler estimates them somewhere between \$600 and \$800. Last year 120,000 automobiles were sold by dealers. Using the lowest Chrysler figure, air bags can be expected to cost consumers as much as \$22,000,000. Replacement costs of an air bag are estimated by manufacturers at two to three times the original cost.

Passive or motorized belt systems would cost \$70 to \$100 in GM cars; \$150 in Ford automobiles; and \$350 in Toyota automobiles. The motorized belts or the passive belt systems seem only to be a good option in the smaller compact vehicles while in larger vehicles air bags would probably be installed.

Next, what happens when an air bag goes off? Bags will go off with a frontal impact of approximately 12 miles an hour or greater. There is always the possibility the air bag will deploy with a lesser impact or accidentally without warning. The system would be electrical and any flaw in the system, of course, could create a short causing the bag to dispense. No one would know of a defective system, since there is no way to really test the future functioning of an air bag system. You can imagine what the multiplier effect would be if a bag deployed and caused an accident involving a second or third vehicle.

Since there is no way to test the future functioning of

a system, 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. The customer will hold the person who installed the bag that went off inadvertently liable for his injuries.

Converse to that is the consumer who, after having the bag refitted, is involved in an accident and the bag does not go off. This liability would not only extend to franchised dealers, but would possibly include service stations and any other type of repair facility. A severe liability exposure would be put upon these repair facilities which could raise insurance rates to the repair facilities, in turn raising their cost of doing business, which would be passed on in the form of higher repair bills.

Finally, it will take some 13 years to get virtually every vehicle on the road covered by some type of passive restraint system if the passive restraint mandate is allowed to go into law. Seat belts and other 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 exception of those older than 1964 and exempt vehicles.

Furthermore, air bags or passive restraints alone are not the answer, as they only are effective under certain conditions, such as frontal impacts. We ask that you encourage the use of current safety systems in autos by passing this legislation into law.

Thank you.



For Further Information Contact:

SUSAN MIRINGOFF J.D., R.N.
Assistant Director
(913) 233-8638

March 17, 1986

SB 520 MANDATORY SEAT BELT LAW

Mr. Chairman, members of the Transportation and Utilities committee, my name is Terri Rosselot and I am a registered nurse and represent the Kansas State Nurses' Association. KSNA supports SB 520 making seat belt use mandatory safety requirement for front seat occupants in passenger cars. As both health care providers and health care consumers we are acquainted with the increasing costs of health care today. Statistics indicate that seat belt use can and does reduce the severity and number of occurrences of injuries as a result of collisions.

Hospitalization and medical costs will be significantly lower for those wearing seat belts in an automobile collision. This impacts not only on the individuals but cumulatively on society as a whole. Economic considerations include both direct and indirect costs. Direct cost include hospitalization, rehabilitation and all other health costs incurred by the injured person. Indirect cost include loss of wages due to inability to work during recovery or even total disability due to injuries. This, in turn, results in loss of family income and possible long term income needed from government support programs such as Medicaid and Social Security programs which are already overextended.

Employers may incur expenses under workers compensation, cost of rescheduling and temporary replacements. Opponents of mandatory seat belt laws feel very strongly that it is their constitutional right to drive or ride in an automobile with or without their seat belt fastened. They believe that if they are injured or killed it is their responsibility and that any government interference unfairly impacts on their freedom of choice. There are several arguments that refute the freedom of choice claim in the case of seat belt use. The license to drive a vehicle in Kansas is not a right but a privilege after the requirements are fulfilled to receive a drivers license. The state has the power to and does regulate the use of public roads and highways and the operation of vehicles on the roads. The state has the power to require that drivers turn their headlights on at dusk or that they wear glasses when driving if their vision falls below a certain level of acuity. Requiring drivers and passengers to wear their seat belts serves to accomplish the societal interest in safety. The federal government realized the importance of seat belts years ago when they required seat belts to be installed in automobiles. Passengers on airplanes are required to wear seat belt while traveling by air. Either you fasten your seat belt or you do not fly. There has been no rebellion against this mandate as being an infringement on personal freedom. The potential of reducing death and injuries is much greater by wearing a seat belt in a car than flying in an airplane. Seat

belts, properly utilized will restrain the occupant so that he/she will not be thrown from the vehicle by way of doors or windshield. The driver may also be able to maintain control of the vehicle if he is restrained in the drivers seat instead of being tumbled about the interior of the car.

The state also has an interest in promoting the public health and general welfare of its citizens. Mandatory seat belt use will save many lives and reduce the number of injuries incurred on the states roads and highways.

The Kansas Department of Transportation compiled statistics on seat belt usage and the extent of personal injuries from vehicle accidents during the years 1981-1983 in Kansas. The reported number of motor vehicle accident occupants totaled 376,074 persons. While 38,500 occupatns were wearing seat belts, the vast majority numbering 337,574 were not. The value of seat belt use is easily demonstrated by examining the fatality statistics. .09% or 36 occupants of the 38,500 belted occupants were killed as opposed to almost three (3) times the percentage of fatalities for unbelted occupants .23% or 778 occupants of 337,574. Other states such as Missouri have passed seat belt use laws in an attempt to lessen injuries and fatalities and in an attempt to comply with Secretary Doles plan for nationwide mandartory seat belt laws by 1989. Many other countries have legistion on this

SB 520 Mandatory Seat Belt Law
March 17, 1986
Page 4

area and statistics show a substantial increase in seat belt usage and declines in fatalities and injuries in automobile accidents. In 1972, compulsory seat belt use went into effect in Australia. During the first two years there was a 300% reduction in eye injuries, 51% reduction in drivers admitted to hospitals. The usage rate increased from less than 30% to approximately 80%. Even if Kansas doesn't reach these impressive usage levels, it is clearly shown that any increase usage brings fewer injuries and a lessening in severity of injuries received.

Because seat belts are already in place in most automobiles, the requirement that they be fastened requires no additional cost to the consumer in terms of installation of new equipment. The only cost appears to be the cost of enforcement which is small in contrast to the numbers of lives that can be saved.

As advocates of public health and welfare we feel that it is of utmost importance to the citizenry of Kansas that SB 520 be passed so that our roads and highways will be safer for all.

The earliest expression of concern regarding the role of vehicle restraint systems in highway safety was the statement of Earl of Andrews:

"Quoth what fool darest upon the highways of this realm without properly strapping his ass to his cart."

address before His Majesty's Order of Scribes, Hamfin on Tyrne Clarkshire, England, October 4, 1983, reported in F. Accad., The Barrister,s Tome xvi (1814).

KSNA

the voice of Nursing in Kansas

Auto Seat Belts: Good Prenatal, Postpartum, and Infant Care

National data show automobile accidents as the leading cause of maternal death.¹ Generally, women are the best seat/shoulder belt users. However, this use decreases during pregnancy, for

fear that the belt itself may increase the chances of fetal or personal injury.² This fear is unfounded; pregnancy is not a contra-indication to seat/shoulder belt usage.

In a car crash, personal injury occurs when an occupant hits part of the vehicle; seat/shoulder belts reduce the likelihood of such impact/injury. Pregnant women and the unborn stand a similar better chance of survival if the mother uses seat/shoulder belts,^{3,4} according to presently available studies. The best chance for fetal survival is the survival of the mother; this fact is stated by the American College of Obstetricians and Gynecologists in an official reference document for its members.² Properly placed, seat/shoulder belts can reduce serious injuries and death by 50 per cent.⁵

Seat/shoulder belts are also valuable after the child is born. Both mother and child should always be properly belted. The common practice of holding the child or placing the child in a feeding or carrying seat is to be discouraged because it is not very protective. Appropriate federally approved child restraints can account for a reduction of 70-90 per cent in serious infant injuries or deaths.⁵

Infants and children can be taught to accept the child restraint as a part of travel,⁶ and can act as a role model for their parents. Counseling by health care providers about using child restraint devices has been shown to increase usage from the usual 5-20 per cent to as much as 69 per cent.^{6,7}

The Phoenix Area Indian Health Service has coupled a "Buckle Up Your Unborn Baby" maternal campaign with a "First Ride, A Safe Ride" infant campaign to reduce non-obstetric maternal deaths, and reduce infant injuries through proper automobile restraint usage. This program was initiated in Spring 1984 for our facility users in the states of Arizona, Nevada, California, and Utah.

In conclusion, health care providers should educate pregnant women that it is desirable to *continue* wearing seat/shoulder belts during pregnancy. Additionally, pregnant women should be urged to purchase and use an infant/child restraint system. Use of child seats should begin with the initial ride home from the hospital, and be used whenever transporting the child. It is hoped that these measures will allow for the raising of a new generation addicted to seat/shoulder belt usage, and free from unnecessary automobile carnage.

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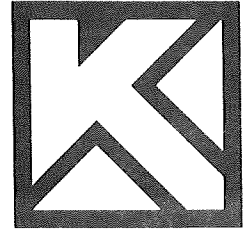
Phoenix Area Indian Health Service, 3738 No. Sixteenth Street, Suite #A, Phoenix, AZ

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Letters to the Editor pg 892-893

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 520

March 18, 1986

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Transportation Committee

Mr. Chairman, members of the committee:

My name is Jim Edwards and I am Director of Public Affairs for the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to appear before you today in support of SB 520, a bill which would require seat belts to be worn by all front seat passengers in a passenger vehicle.

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 which includes 200 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. KCCI receives no government funding.

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.

While the business community does not usually lead a charge for increased regulation, it realizes that today in the U.S., citizens and businesses alike are

*H. Transp. 3/18/86
Attach. 11*

paying, in both time and dollars, increased costs due to motor vehicle accidents. In fact, during 1983, U.S. business:

1. found that 34% of all on-the-job accidents were caused by motor vehicles;
2. saw over 10 million workdays lost on the account of motor vehicle accidents; and,
3. spent nearly \$10 billion as a direct result of motor vehicle accidents.

In most cases, all of these figures could be drastically reduced by simply having the front seat passengers and driver wear their seat belts. In fact, this is obvious enough that most firms with company autos have adopted seat belt policies.

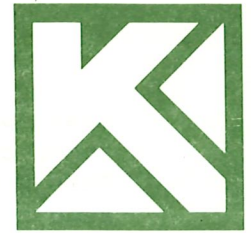
Realizing though that accidents do not only happen in business autos, organizations like ours, representing business and industry, are taking strong stands to urge the passage of mandatory seat belt legislation. When such legislation is passed, it is estimated that persons complying with the law and who are involved in a motor vehicle accident will be five times less likely to die, three times less likely to be injured, and should see their medical care costs reduced four times.

We urge you to support this legislation and reinforce the use of something which is already in place and has been paid for...the automobile seat belt.

Thank you for the opportunity to appear before you today.

ISSUES '86

Kansas Chamber of Commerce and Industry



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

February 21, 1986

Mandatory Seat Belt Usage

ISSUE: Should Kansas enact legislation to require every driver and front seat passenger in a passenger vehicle to wear safety belts?

BACKGROUND: The issue of the added safety derived from seat belt use has been well documented in recent years. In fact, a recent study conducted by the University of Colorado Medical School identified 256 vehicle accident crashes in which one front seat occupant was wearing a safety belt, while the companion in the other front seat was not.

The results of the study showed that the unbuckled occupant: 1) was five times more likely to die; 2) was three times more likely to be injured; and, 3) paid four times more for medical care. Information such as this encouraged U.S. Secretary of Transportation Elizabeth Dole to issue a Federal Motor Vehicle Safety Standard which would require the installation of "automatic crash protection" equipment, also known as passive restraint systems and of which air bags are one type, in 1990 model year vehicles unless 2/3 of the population of the United States is covered by state mandatory seat belt use laws. If by 1989, 2/3 of the U.S. population resides in states with mandatory seat belt laws, the order mandating the more costly passive restraint systems would be rescinded.

In examining mandated installation of air bags, several items including initial cost, effectiveness, and replacement cost, must be considered.

First, the initial cost of air bags will vary from approximately \$800 to \$1200 per vehicle. It is estimated if air bags were mass produced, costs would be \$500 to \$800 per vehicle.

Secondly, air bags are as safe as seat belts only in certain circumstances. Air bags offer no protection in rear end, rollover, or side collisions. They offer protection only in frontal collisions, and then only when fully inflated. Air bags inflate and deflate so rapidly that there is just a fraction of a second when the air bag gives full protection. In the case of secondary collisions, when the vehicle strikes something else after the initial collision, little if any protection would be received from the air bag. These reasons contribute to the National Highway Traffic Safety Administration report, based on actual crash data, that shows the lap/shoulder belt is 5.5 times more effective in preventing fatalities and 2.4 times more effective in preventing injuries than are air bags.

(Over, Please)

Last, but not least, the cost of bag replacement after it has been inflated (they can be used only once) is 2½ to 3 times the initial cost of the bag. This would be approximately \$1400 to \$2400 per vehicle. This would be the same cost despite whether the accident was a fender bender or a major collision.

KCCI POSITION: In addition to the comparative data detailed above on seat belts vs. air bags, the National Highway Traffic Safety Administration has shown that motor vehicle accidents caused 10 million lost workdays in business during 1983 and cost American business almost \$10 billion as a direct result of these accidents. KCCI strongly supports legislation, such as SB 520, which will mandate the use of seat belts (already in almost every vehicle on the road today) and save individual and business consumers from bearing the cost of mandatory installation of more costly, yet less effective overall, passive restraint systems such as air bags.

TESTIMONY BEFORE THE HOUSE TRANSPORTATION COMMITTEE

by Nancy Bauder, President, Kansas Women for Highway Safety

I would like to testify for myself and Kansas Women for Highway Safety. I have a brother, Michael Clark, who designs builds, and drives racing cars. Most of his employees are members of the group ABATE, and I assumed he was a member too, because his philosophy of individual 'rights' of drivers is very similar to the philosophy of ABATE. However, he drew the line at 'seat belt laws.' They wanted him to display anti-mandatory seat belt literature in his shop and sign a petition against safety belt laws. He refused. His reason: "A lot of safety technology being used today in passenger cars was developed first in racing vehicles to prevent drivers from being hurt. Standard components in new cars include padded bumpers, safer seats, collapsible steering columns-- and seat belts. Seatbelts are part of the overall safety design of a car and should be used by everyone as the other safety features are. I wouldn't get into my regular car to drive 50 mph and possibly make contact with another car going the same speed, without my belt. That's the same as driving my race car into a solid object at 100 mph. And I certainly wouldn't go without a belt in my race car." He has destroyed several cars over the past 15 years, and he has never been injured, except for seat belt burns on his shoulders.

The Kansas Women for Highway Safety Organization's prime objective is highway safety education. We are composed of individual women (and some men) and 20 organizations across the state. Seatbelt usage is at 10-12% in Kansas. Through the Kansas Seatbelt Project, Dept. of Transportation and NHTSA-funded safety belt materials and educational programs are spread across the state through groups such as ours, the PTA, State Extension Service, the Highway Patrol, and 4-H to name a few. Corporations such as Southwestern Bell, Hallmark, Kansas Power & Light and many others also provide seat belt educational programs. Even with extensive overall community-involvement programs in targeted areas, we can only hope to raise usage to 20% at the most in these communities. However, statistics from states with belt use laws show usage rates, after an initial burst, leveling off at 40-50%. We can't possibly bring seat belt usage up and fatalities down to that extent with education alone.

We want what is best for both the state and the individual, and I am sure you do too. We feel a mandatory seat belt law would benefit the most people in Kansas.

Thank you very much.

Nancy Clark Bauder
RR #4 Box 241A
Leavenworth, Kansas 66048

Included testimony provided by: Michael Clark
Clark's Body Shop
Leavenworth, Kansas 66048

H. Transp. 3/18/86
Attach. 12

RESOLUTION NUMBER 2

~~WHEREAS, the states of Missouri and Oklahoma adopted legislation in 1985 providing for safety belt use laws in their states, and~~

WHEREAS, safety belt use will provide a fifty percent reduction in fatalities and drastic reductions in serious injuries caused by motor vehicle accidents, now therefore,

BE IT RESOLVED, that the delegates ^{KANSAS HIGHWAY USERS} attending this Four-State Highway Users Conference ~~urges the State Legislatures in Arkansas and Kansas~~ to adopt a safety belt use law in their next regular legislative sessions.

Four-State Highway Users Conference
Resolutions Committee

James O. Foster, Chairman
Boeing Military Airplane Company
Wichita, KS

C. C. (Pat) Keller
Oklahoma Asphalt Pavement Association
Oklahoma City, OK

Joseph W. Peters
Arkansas State Grange
Rogers, AR

James K. Van Buren
Sverdrup & Parcel & Associates
St. Louis, MO

OHIO
UTAH
MINNESOTA

H. Transp. 3/18/86
Attach. 13

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Supporting Senate Bill No. 520
requiring the use of seat belts.

Presented to the House Transportation Committee,
Rep. Rex Crowell, Chairman; Statehouse, Topeka,
Tuesday, March 18, 1986.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I am submitting this testimony on behalf of the members of our Association and the highway transportation industry. We support Senate Bill 520 which would require the use of seat belts.

The Kansas Motor Carriers Association adopted a resolution in support of a Kansas seat belt use law at its annual membership meeting held during our convention September 28, 1984. This Association continues to believe that the citizens of the State of Kansas will realize a significant reduction in injuries, deaths and economic losses if the 1986 Legislature adopts Senate Bill No. 520.

The federal Department of Transportation motor carrier safety rules (sections 392.16 and 393.93) require the driver to use a seat belt if the vehicle is equipped with a seat belt assembly. All trucks and truck tractors manufactured on and after January 1, 1965, are required to be equipped with seat belt assemblies. The Kansas Corporation Commission also has adopted this safety regulation.

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 vehicle they operate.

We would request favorable consideration of Senate Bill No. 520.

#####

*H. Transp. 3/18/86
Attach. 14*

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON S.B. 520

PRESENTED TO House Transportation Committee, 1986

This is the official position taken by the Kansas Department of Health and Environment on S.B. as amended by Senate Committee of the Whole.

BACKGROUND INFORMATION:

In 1971, Australia became the first jurisdiction in the world to mandate the use of seat belts. Since then, more than 30 countries and provinces have done the same. In the United States as of March, 1986, 21 states and the District of Columbia have mandatory safety belt legislation. The Highway Users Federation expects 28 states to consider this regulation in 1986. They claim the chances are good that laws will be adopted in Arizona, Minnesota, Pennsylvania, Utah, Virginia, Wisconsin, Arkansas and Rhode Island according to the New York Times, January 18, 1986 article. Kansas was not included.

The National Highway Traffic Safety Administration estimates safety belts are 50-65% effective in preventing deaths and injuries. Nationwide an estimated 14,000 to 18,000 lives could be saved each year by seat belt use. Child safety restraints are said to be 80-90% effective in preventing death and injury. However, these are estimates.

According to the Highway Safety plan for FY 86, in 1984, 322 fatalities occurred in Kansas. Seat belt effectiveness in fatality prevention would have been 76% if all drivers had used belts when available. Utilizing this measure 245 deaths could have been prevented. A safety belt law could reduce the hardship and costs of nearly 3,100 injuries, save \$23 million worth of lost labor and decrease economic losses associated with highway death and injury alone by as much as \$59 million.

The Kansas Head Injury Association reports that 50% of head injuries are caused by motor vehicle accidents. Nationally, head injuries cost \$4 billion per year. In the United States there are more than 1.9 million people with head injuries. Each year, 400,000 people are hospitalized because of head injuries, and 35,500 man - years of work are lost.

In New York, where the first seat belt law went into effect December 1, 1984, traffic fatalities fell 17% in the first nine months compared with the average for the same period in the previous five years. There were 51 fewer deaths of vehicle occupants during the same period last year. The total, 795 deaths, was 165 fewer than the average for the period during the last five years.

In Britain, where the usage rate is unchanged at 95% three years after a national law was passed, fatalities are about 20% to a 30-year low.

*H. Transp. 3/18/86
Attach. 15*

General Motors Corporation is showing its support for the laws by paying \$10,000 to the estate of anyone killed in a new GM car or light truck while wearing a seat belt.

According to American Health, "...laws, if enforced, can change habits. The reason only 10% of Americans buckle up each time they get into a car, is that the chance of an accident appears slim: one serious crash per 100,000 car trips. Each safe trip rewards the nonuse of seat belts; the bother of buckling up has been avoided without injury. Viewed from a lifetime perspective, however, the case for seat belts becomes compelling indeed. Since we take an average of 45,000 car trips over the course of a lifetime, say statisticians, the chance of being in a serious accident is nearly one in two." 6

Canada's experience and studies by a number of researchers (e.g., F. Scott Geller) clearly indicate that seat belt compliance behaviors are both predictable and modifiable, given the proper conditions. The elements of valid and believable danger, coupled with ongoing support, feedback to vehicle occupants, and deterrence for noncompliance, are necessary to achieve even minimal behavior changes. Studies have shown that education alone is not enough. 7

STRENGTHS:

1. Requires use of properly fastened safety belt while the vehicle is in motion. This would mandate usage on any roadway in the state.
2. Kansas Department of Transportation would initiate an educational program. Other interested agencies such as K-State Extension and Kansas Department of Health and Environment endorsing this measure could cooperatively enhance the statewide information network.
3. Mandates evaluation of the effectiveness of this act by Kansas Department of Transportation proving this regulation can work in Kansas as it has in other states with this law.
4. A \$25.00 fine has been specified for violators (including court costs).
5. Would meet the April, 1989 effective date.

WEAKNESSES:

These exclusions limit this bill's effectiveness.

1. The bill is applicable only to front seat occupants of a passenger car. This leaves all other occupants unprotected, whether backseat or riding in other areas of a car (i.e., rear of station wagon).
2. Vehicles constructed whether on a truck chassis or with special

features for occasional off-road operation are excluded. This includes campers, pickup trucks, four-wheel drive vehicles, and recreational vehicles, among others, which are exempt.

3. Handicap equipped vehicles are not included leaving these occupants unprotected.
4. Does not create insurance rate reductions for persons who constantly wear seat belts.
5. Does not fulfill the requirement for reduced damages in accident cases, however none of the other states meet all the criteria.
6. Effect is minimized by the fact that noncompliance can not be used to stop the vehicle and cite the driver/occupants.
7. U.S. mail carriers and persons engaged in delivering newspapers are exempt, therefore they are unprotected.

DEPARTMENT'S POSITION:

The position of the Kansas Department of Health and Environment, from a health and safety perspective, is that all vehicle occupants be properly restrained, whether that means a seat belt and/or infant/child restraint system, therefore the Kansas Department of Health and Environment recommends passage of S.B. 520 as amended by Senate Committee of the Whole.

Presented by: Dr. Lorne A. Phillips, Dir.
Bureau of Community Health
KDHE

References

1. Federal Highway Administration Highway Statistics, 1984.
2. Economic Cost to Society of Motor Vehicle Accidents, National Highway Traffic Safety Administration, Washington, D.C.
3. Perini, Victor J., General Counsel, Highway Users Federation, Washington, D.C., 1986.
4. State of New York, Department of Motor Vehicles, December, 1985.
5. The Wall Street Journal, "Despite Recent Laws, Many Motorists are Still Casual About Wearing Seat Belts," page 19, March 7, 1986.
6. American Health, Vol. 4, No. 4, May, 1985.
7. Topeka Capitol-Journal, "Seat Belt Advocates Find Support", November 18, 1985, page 6.

SUMMARY OF TESTIMONY

Before the House Committee on Transportation

SENATE BILL 520

Presented by the Kansas Highway Patrol

(Lieutenant William A. Jacobs)

March 18, 1986

Appeared in Support

We appear in support of Senate Bill 520.

This support is based on our long experience in the area of accident investigation and the countless studies that have been conducted in this regard.

We consider the facts speak for themselves.

Indicative of this is that as of 1-1-86, 16 states and the District of Columbia have passed seat belt legislation and it is predicted 50% of the states will be included by the end of this year.

In our estimation the basic consideration is that experts in the field state that between 25 and 50 percent of all highway deaths could be avoided through the use of restraint systems. This alone states our concern.

Non-use of restraints is a national problem and the reason we are seeing such a widespread educational effort.

For example, the General Motors offer of a \$10,000 accidental death benefit for persons wearing the restraint system installed in certain GM products.

The plan, in affect since 1984 has resulted in the payment of only 214 claims. While this might sound prohibitive consider:

General Motors estimates the covered vehicles have traveled 93 billion miles in this time period, while 3.0 deaths per 100 million miles traveled has been an acceptable or predictable standard for years.

The General Motors experience has been 1/12 of the national standard!

We are most aware that many persons continue to be concerned about having restraint systems in place in the event of a collision and possibly being "trapped" in the vehicle.

One common fear is fire following the collision. The truth is fire occurs in only one half of one percent of all collisions.

*H. Transp. 3/18/86
Attach. 16*

Another fear is that they may be safer by being ejected. It can be definitely stated the human body is no match for the interior of the vehicle, let alone the pavement or other surface they might encounter on ejection. Consider the force of a 40 MPH collision is comparable to driving the vehicle off a one story building to say nothing of collisions at higher speeds.

The concern has reached international levels.

Great Britain passed a seat belt law in January of 1983. In the interim, it is estimated to have saved at least 500 lives and reduced serious injuries by 20-25 percent.

The member of parliament who introduced the measure was quoted as stating, "Why not give it a try. If it is valuable it will prove itself."

We agree and urge favorable consideration of this bill.

Kansas Congress of Parents and Teachers

Branch of the National Congress
STATE OFFICE, 1829 S. W. GAGE BLVD.
TOPEKA, KS 66604
913-273-2281

Mr. Chairman and Members of the Committee:

I'm Gaila Hein, 1st Vice President and Legislative Chairman for the Kansas Congress of Parents and Teachers. As an officer of Kansas PTA, I am speaking for a membership of 60,000 people, representing all areas of the state; rural and urban, and all walks of life; parent, teachers, students, grandparents, senior citizens, school administrators, child care specialists, policemen, doctors and others who care about children and youth.

The Kansas PTA past it's first resolution supporting the use of seat belts and seat belt use legislation at our 1982 State Convention and we have continued to support that resolution as a priority action each year since.

We have disseminated information promoting seat belt use by sending out pamphlets holding parenting workshops, handing out lifesavers to students, conducting programs with the "Seat Belt Convincer", showing films and by imploring Kansas Legislators to pass a seat-belt-use law.

The National PTA, representing 5.6 million members members, at the 1983 convention past a similar resolution, so nationwide we have been trying to achieve this goal. We were delighted when New Jersey succeeded. I smiled when I drove through Iowa and Ohio last year and saw these signs, "This State Has A Seat-Belt-Law - Buckle Up". When Missouri Legislated mandatory seat belt use we were elated, it was getting closer to home!

Next month at the National Conference in Washington D.C., that will be one of the first questions other legislative chairmen will ask me. "Has Kansas past seat-belt-use legislation?" I'm hoping I will be able to say an emphatic "YES".

Of course it's a priority issue. Motor vehicle accidents are the number one killer andcripler of children. You know the statistics, we've shared them with you every

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H. Transp. 3/18/86
Attach. 17

year and you've heard them again today. What we can't understand is the acceptance of this carnage on our highways when we could do something positive to prevent about ninety percent of it.

We shudder at the thought of war and natural disaster, and yet, the killing of three hundred to five hundred people in highway accidents in one weekend doesn't even make headlines in our newspapers.

We understand about personal freedom. Believe me, nothing is more important to us than freedom. That is why it is so important for our youth to have the freedom to grow up healthy and unmaimed, to be free from the burden of pain, the rising cost of high car and medical insurance premiums that result. To be free of the social responsibility of caring for the injured, providing rehabilitation, and the support of the dependents of people injured and killed by car accidents. Freedom entails some responsibility on our parts and that should include protecting ourselves as best we can at all times, so that we may not be a burden to our loved ones and society.

I know that the citizens of Kansas are as concerned for the safety of motorists on Kansas roads as the citizens in any other states. Let's show those traveling Kansas roads our concern by passing seat belt use legislation in Kansas this year.

Thank you for allowing us to speak to you on behalf of PTA members in this state.