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TESTIMONY IN SUPPORT OF SB296

Senate Judiciary Committee

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Thank you for the opportunity to appear before your committee Chairman Wilborn. My name is Scott Richburg, here on behalf of General Motors. I appear in strong support of SB296.

According to the Kansas Highway Patrol:

> "The best protection in an automobile crash is your safety belt."

The data backs up this common-sense statement. According to the Centers for Disease Control:

> "More than half of the people killed in car crashes were not restrained at the time of the crash. Wearing a seat belt is the most effective way to prevent death and serious injury in a crash."

It is well known that seat belts dramatically reduce risk of death and serious injury. According to the National Highway Traffic Safety Administration, among drivers and front-seat passengers:

- In a car seat belts reduce the risk of death by 45%, and cut the risk of serious injury by 50%; and
- In a light truck, seat belts reduce the risk of death by 60% and moderate to critical injury by 65%.

Most Kansans recognizes that seat belt use is an effective way to protect themselves against needless injury and death in motor vehicle crashes. An overwhelming majority – approximately 87% in 2016 – choose to buckle up when they ride in passenger vehicles.

Seat belt use is not just a good idea, it's the law. For more than three decades Kansas has required seat belt use. Moreover, in 2007, Kansas made seat belt non-use a primary offense for police to enforce.

Even though the majority of Kansan's recognize the benefits of seat belt use and act to protect themselves, and despite the fact that Kansas's requirement that motorists wear their seat belts to prevent injuries in the event of a collision, a small percentage of vehicle occupants who choose not to

wear their safety belt are able to keep that information out of the hands of jurors who are asked to determine comparative fault and mitigation of damages issues in
lawsuits arising from motor vehicle accidents.

The current statute, KS Stat. 8-2504, states in part:

> (c) Evidence of failure of any person to use a safety belt shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages.

In operation, this provision amounts to a "gag rule" preventing discussion of important evidence in assessing comparative fault or mitigation of damages in motor vehicle lawsuits.

Let me say that again: under current Kansas law, a person can decide not to use the primary safety device provided with the vehicle, and then after a crash can sue the car company for failing to provide sufficient crash protection, and the jury considering the case cannot consider failure to use the seatbelt to determine that claimant's damages under comparative fault and mitigation of damages principles.

The approach taken by the current seat belt statute with regard to product liability lawsuits shows undeserved distrust to jurors considering those cases. Having heard the evidence presented in a case and been entrusted with deciding the outcome, juries should not have their assessment about the role of seat belts artificially limited even though they may have determined that the failure to buckle up caused a proportion of the damages.

SB 296 would remove the seat belt gag rule and allow juries to evaluate evidence of a claimant's seat belt use or non-use within the full context of the accident circumstances and allocate fault and assess damages based upon the jury's judgment and determination of the specific circumstances of the case.

SB 296 accomplishes this result by removing the "shall not" and replaces with "may be considered by the trier of fact". In short, SB 296 returns common sense and trust to the jury system.

Juries will consider the evidence of the vehicle's occupant protection system, along with evidence about seat belt use or non-use, and allocate fault and assess damages accordingly based on the evidence. In any given case, the jury may choose to adjust the damage award when a claimant fails to buckle up – but the jury may also decide that seat belt usage did not make any difference at all in a particular case.

This approach is consistent with numerous other states that allow the jury to consider non-usage evidence broadly for comparative negligence or reduction of damages purposes, particularly if that evidence can be shown to be a factor in enhancing the plaintiff's injuries.

SB 296 is a simple, common sense reform that allows juries to recognize and give full effect to the injury-reducing capability of seat belts, where the facts presented at trial show belts would make a difference. I urge your support of this bill.

Thank you again for the courtesy Mr. Chairman, and I am happy to stand for questions at the appropriate time.

States that Allow Admission of Seat Belt Non-Usage as Evidence

States that allow the admission of seat belt non-usage evidence to establish comparative fault or failure to mitigate damages include:

A. Oklahoma – Ok. St. Ann. § 12-420 (adult seat belt non-use evidence may be submitted into evidence in any civil suit to reduce damages).

B. Texas – *Nabors Well Services v. Romero*, 456 S.W.3d 553, 555 (Tex. 2015)("relevant evidence of use or nonuse of seat belts is admissible for the purpose of apportioning responsibility in civil lawsuits.").

C. Florida – Fla. Stat. Ann. § 316.614(10) (seat belt non-usage may be considered as evidence of comparative negligence).

D. Arizona – *Law v. Superior Court*, 755 P.2d 1135 (Ariz. 1988) (non-usage is admissible to establish comparative fault).

E. New York – N.Y. Veh. & Traf. Law § 1229–c(8) ("[non-compliance with the provisions of this section … may be introduced into evidence in mitigation of damages provided the party introducing said evidence has pleaded such non-compliance as an affirmative defense.").

F. Arkansas – The Arkansas Supreme Court struck down that state's seat belt evidence exclusionary statute (Ark. Code Ann. § 27-37-703) as unconstitutional in *Mendoza v. WIS Int'l, Inc*. (Apr. 14, 2016). Admissibility of seat belt evidence is now governed by pre-statute common law, which allows the admission of non-use evidence.

G. Alaska – *Hutchins v. Schwartz*, 724 P.2d 1194 (Alaska 1986) (Failure to wear seat belt is relevant evidence for purpose of damage reduction in automobile collision case)

H. New Jersey – *Waterson v. General Motors Corp.,* 544 A.2d 357 (N.J. 1988) ("[i]f a jury finds a plaintiff negligent for failure to wear a seat belt, plaintiff's recovery for injuries that could have been avoided by seat-belt use may be reduced by an amount reflecting plaintiff's comparative fault in not wearing a seat belt.").

I. California – Cal.Vehicle Code § 27315(i) (seat belt non-use evidence is admissible to reduce damages if defendant can show passenger would have sustained reduced injuries). *See Housley v. Godinez*, 4 Cal. App. 4th 737, 6 Cal. Rptr. 2d 111 (1992)

J. Kentucky –*Geyer v. Mankin,* 984 S.W.2d 104, 107 (Ky.App.1998). ("[I]f there is relevant and competent evidence that the plaintiff was contributorily at fault by failing to wear an available seatbelt and that such fault was a substantial factor in contributing to or enhancing the plaintiff's injuries, then the issue of the plaintiff's fault is submitted to the jury for determination. If the jury determines that the plaintiff has some degree of fault due to failure to wear a seatbelt, the liability of the parties is then determined by their respective degrees of fault."). *See also* Wemyss v. Coleman, 729 S.W.2d 174, 180 (Ky. 1987).

K. Idaho – Idaho Code § 6-1608 provides procedural requirements for admitting seat belt non-usage evidence and imposes certain limitations with respect to minor occupants.