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TO: **SENATE JUDICIARY COMMITTEE**

FROM: **CHRIS SORENSON**
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RE: **S.B. 296**

DATE: **FEBRUARY 7, 2018**

Mr. Chairman, members of the Committee, my name is Chris Sorenson, and I am submitting this testimony on behalf of the Kansas Association of Defense Counsel (KADC). KADC is a state wide non-profit organization of Kansas lawyers who devote a substantial part of their practice to the civil defense of litigated cases, with a membership of approximately 235 attorneys. The goal of KADC is to enhance the knowledge and improve the skills of defense lawyers, elevate the standards of trial practice, and work for the administration of justice.

KADC supports S.B. 296 because it allows Kansas juries to hear relevant and important evidence regarding whether and how the people involved in a motor vehicle accident were wearing their seatbelt.

Generally speaking, the rule in this state—provided in K.S.A. 60-407(f)—is that all relevant evidence is admissible. This makes sense. In Kansas lawsuits, we count on judges and juries to make decisions about who or what may have caused the plaintiff's alleged injuries. We want to make sure the finder of fact gets the whole picture regarding all of the factors that may have contributed to those issues. A notable anomaly to this rule, however, is K.S.A. 8-2404, which currently precludes juries from hearing "evidence of failure of any person to use a safety belt ... for any purpose of determining any aspect of comparative negligence or mitigation of damages."

Commonly, the first question the jury foreman sends the court deputy during jury deliberations in a motor vehicle accident case is: "Was the plaintiff wearing a seatbelt?" Right now, courts cannot answer that question and must inform juries they cannot consider this common-sense inquiry. S.B. 296 fixes this problem and allows juries the opportunity to have that question answered and not have that information withheld from them.

KADC has a direct interest in this litigation. Our members are serving as defense counsel in civil cases where courts are required to apply this statute and are given no discretion to decide

whether evidence of seatbelt use should be admissible. In short, the current rule does not lead to a just or common-sense outcome in motor vehicle cases.

As I'm sure this body can appreciate, the non-use of a seatbelt is an important fact in determining fault and damages and to ensure a fair application of justice to the parties. Our members have experienced firsthand the rigidity of K.S.A. 8-2404 in its current form, which prevents the defendant from arguing the comparative fault of the plaintiff or the fault of a responsible non-party when injuries and deaths are partly or wholly caused by the failure to properly use an available seatbelt.

One example from my experience is *Frisch v. Senogles*, Shawnee County Case No. 2016-CV-000198. In that case, the defendant caused a collision at an intersection with a transport vehicle. Notably, the transport driver was not injured. However, an unbelted passenger in the rear of the transport van later died from multiple serious blunt force injuries when she was thrown against the inside compartment of the van. The defendant was prepared to offer expert medical testimony that the decedent would not have sustained the blunt force injuries if she had been seatbelted, as the transport company acknowledged was their duty. However, the court was required to exclude this relevant and important evidence because of K.S.A. 8-2404. As a result, the court held that the transport company could not be joined as a defendant. Thus, the plaintiff benefitted by using K.S.A. 8-2404 offensively to obtain a judgment for all of the plaintiff's damages, *even after securing a pre-suit settlement with the transport company*. In other words, the plaintiff received a double recovery for damages—damages that were *not* directly caused by the defendant's conduct. This is not justice.

Another reason why KADC favors S.B. 296 is that it would bring Kansas's evidentiary rules into harmony with its regulatory policies regarding seatbelt use. K.S.A. 8-2503 requires that "[e]ach occupant of a passenger car manufactured with safety belts ... shall have a safety belt properly fastened about such person's body at all times when the passenger car is in motion." Because wearing a seatbelt in Kansas is required by law, a statute that excludes all mention of seatbelt use in a civil trial is inconsistent with what Kansas law requires of motorists.

S.B. 296 solves these problems by expressly stating that evidence of seatbelt use is admissible at trial. It prevents the defendant from receiving unequal justice and being required to pay verdicts where the comparative fault of the plaintiff or the fault of a non-party related to seatbelt use was withheld from the jury. In short, this legislation facilitates fair and accurate litigation outcomes by allowing the jury to hear all of the relevant evidence upon which to base their decisions and factor that evidence into their findings of fault and damages.

Thank you for the opportunity to submit this testimony. We would be glad to help with any information needed moving forward. KADC thanks the Committee for considering this important legislation and urges the passage of S.B. 296.