

KANSAS TRIAL LAWYERS ASSOCIATION



To: Senator Rick Wilborn, Chairperson
Members of the Senate Judiciary Committee.

From: Callie Jill Denton JD, Executive Director

Date: February 7, 2018

RE: SB 296 Concerning the safety belt use act; relating to evidence of failure to use a safety belt and admissibility in other actions; amending KSA 2017 Supp. 8-2504 and repealing the existing section. (OPPOSE)

The Kansas Trial Lawyers Association (KTLA) is a professional association of trial lawyers with members across the state. KTLA welcomes the opportunity to testify before the Senate Judiciary Committee as it considers matters that affect Kansans' legal interests. KTLA opposes SB 296 and recommends that the Senate Judiciary Committee not pass it.

SB 296 amends KSA 8-2504(c) by eliminating the statutory prohibition on evidence of failure of any person to use a safety belt in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages; SB 296 makes admission of such evidence permissive.

The Legislature passed KSA 8-2504(c) to prevent negligent drivers from shifting accountability and to keep insurance companies from avoiding claims or limiting coverage when an injured policyholder or claimant was not buckled up. Kansas is one of 30 states that do not allow a victim's failure to use a safety belt to be used by a negligent driver as a defense. Kansas is one of 27 states that have statutory restrictions like KSA 8-2504(c) that prohibit admission of evidence of failure to use a safety belt.

KSA 8-2504(c) is not Kansas' only statute limiting admissibility of evidence. Kansas law prohibits admission of evidence of a defendant's insurance status at the time of an accident or injury as proof of the defendant's negligence, KSA 60-254. Evidence that is irrelevant, unfairly prejudicial or that could confuse or mislead the jury is also not admissible.

KTLA supports Kansas' current evidentiary laws, which are consistent with most other states. The current rules on admissibility assure juries are presented only with relevant evidence that is not privileged and that trials are fair to all parties in a dispute.

SB 296 shifts accountability away from the wrongdoer, and it shifts costs from the wrongdoer's auto insurance company to the injured person's insurance company, health insurance company and employer, or the injured person's own pocket book. SB 296 will increase the time and cost of resolving litigated claims. Costlier and lengthier trials are not a benefit to the injured, to insurance policyholders, or to the judicial branch. Consequently, SB 296 is not beneficial to those depending on the civil justice system following an injury auto crash.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the Senate Judiciary Committee not pass SB 296.