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SB2362 ~ House Transportation

Chairman Ruby and members of the House Transportation Committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. I am here to oppose SB 2362 as written and request an amendment to clarify the language to support victims in motor vehicle crashes.

I am not going to dispute all of the testimony that was given prior to mine on the use of safety belts or whether or not one should wear one. I am here to discuss an unintended consequence of this legislation if it is passed the way it is written.

For many years, legislation has circulated related to the usage for or against safety belts. SB2362 will accomplish two things:

1. Require ALL occupants to wear a safety belt. This is a change from just the front passengers. This requirement is for all vehicles up to an 11-passenger van.
2. Move the violation from a secondary to a primary offense. The change will allow patrol officers to pull over a driver when their safety belt is not on, rather than cite a driver as an additional offense when another law is broken.

What previous testimony has not addressed is the potential legal consequences to a driver as a result of SB2362. By requiring all occupants to wear a safety belt, the legislature is creating a legal standard. When an operator or occupant of a motor vehicle does not meet that standard, there is a potential for an assignment of fault

Let me give you a couple of examples:

1. You and your spouse are on your way home from a long weekend with your family. You have a toddler in the backseat who is starting to get cranky after being in the car for a long time. So, you pull over and your

spouse gets into the backseat to tend to the toddler. Your spouse decides that the toddler needs something from the diaper bag in the third row. They unbuckle their safety belt and reach back to the third row to the diaper bag. As they are doing that, you are hit by a drunk driver. Your spouse and child are killed in the accident.

You sue the driver to cover the injuries you received and to support the wrongful death of your spouse and child. When determining damages, the judge interprets the word "violation" in SB2362 as an adjudication, and you do not receive the full amount awarded because you are partially liable since your spouse was not wearing a safety belt. You are partially at fault because you did not follow state law, increasing your negligence.

2. You are driving a group of adults home from an event. Unbeknownst to you, an occupant in the back seat is not buckled in. Your car is hit by a driver who ran a red light. The occupant in the back seat of the vehicle is ejected from the car and suffers serious injuries.

The ejected occupant files suit to cover the injuries sustained. The driver of the other vehicle will argue that the crash did not cause the injuries. Instead, the argument will be that the injuries resulted from a failure to wear a safety belt, and that this failure can be attributed to both the back seat occupant and the driver. So, you, the driver, caused the injuries. If SB2362 is passed as written, there is a good chance the driver will be found partially liable for the injuries to the back seat occupant.

Second, if the back seat occupant is ejected in an accident and is seriously injured or killed, the current version of SB2362 only makes "the fact of a violation of this section" inadmissible. However, the reality is that in cases involving severe injury or death, in the experience of our members, law enforcement rarely will charge an occupant with a violation of this kind of crime. This only makes sense – so what is the point? It is very possible that a judge could interpret the word "violation" to mean an adjudication. The amendment we would like to propose makes the fact law enforcement does not charge the occupant clear.

The last thing I want to tell a grieving family or an injured driver is that they are at fault when they are a victim. Today, I ask you to support the following amendment to make it clear and support victims of automobile crashes.

Use or non use of a seat belt shall not be used in any action as evidence of fault. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this section. The use or non use of a safety belt is not admissible in any proceedings other than one charging the violation."

The clarity comes with replacing 'A violation for not' with 'The use or non use of a safety belt.'

The last two lines in SB2362 should address these issues and remove any negligence for failure to wear a safety belt. However, these lines have been interpreted differently by the court and whether or not a safety belt is worn does determine fault of the driver in an accident.

If SB2362 passes as written, failure to wear a seatbelt will become a component of EVERY crash. That is not the intent of the legislation. By amending SB2362, the interpretation of the statute will protect the driver if their occupants do not wear their safety belt and they are involved in a crash.

Whether or not you support wearing a seatbelt is not our concern. However, if SB2362 passes without the amendment, it could be detrimental to you or someone in your family if they are in an accident.

Thank you for giving me the opportunity to present, I will stand for any questions.