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Members of House Judiciary Committee,

Background:

This testimony is truly my May Day. I have previously presented my concerns regarding the lack of an adequate medical waiver in Senate Bill 296 to the Senate Transportation Committee. I truly hope and pray that I do a better job with this effort than with them.

There are some people such as myself for whom wearing seatbelts is inadvisable. In my case we are not sure if I have Forestier's Disease or Scalederma, but as a consequence of a genetic condition my body is constantly producing new bone spurs. This has already led to 21 surgeries, including 2 rotator cuffs, and I am waiting medical clearance to get my next surgery on my right shoulder through Dr. Holgrew at 303-456-6000. This is going to be a terminal condition as my mother died from a bone spur growing into her brain stem, and I almost died during surgery to remove a bone spur that had grown through my left ear drum and into my brain. I bring this up to fully illustrate that this goes far beyond somebody who simply does not want to put on a seat belt.

Also, I have heard a lot said about driving being a privilege, but this bill covers me as a passenger in the front seat. Have we come to the point in the State of Colorado where it is now a privilege to travel beyond ones yard?

What is wrong With the Current Bill?

Problem 1:

As described on page 4 Section 2 (9)(a) No driver in a motor vehicle shall be cited for a violation of subparagraph (1) of paragraph (b) of subsection (2) of this section unless THE law enforcement officer clearly observes the violation and is able to articulate that the restraining device was unfastened.

Those who drafted the bill wanted to make sure that those who were innocent were not pulled over. That is all together fitting and proper. However, they left a giant hole in the bill by not leaving in provisions in there to prevent those who like me should not wear a seat belt, from being pulled over. The way the bill is now written I can be pulled over by every officer who sees that I do not have my seat belt fastened.

This is far more than a mere inconvenience. Picture my trip to the capitol today. Let's say that 4 officer's saw me and pulled me over at 10 minutes per stop. I would then need to start budgeting in large amounts of time for being pulled over due to this omission from the bill. That is absolutely ridiculous and goes against the very intent of the bill.

Reading from the cover of the bill it states: "Specifies that the intent of the general assembly that the statutory prohibition against profiling be strictly observed by each law enforcement officer who stops or contemplates the stop of a motor vehicle driver for an alleged restraining device violation."

This is also codified in the bill in Section 2(9)(b)" It is the intent of the General Assembly in creating a primary offense in this subsection (9) that the prohibition against profiling, as described in section 24-31-309, C.R.S. be strictly observed by each law enforcement officer who stops or contemplates the stop of a driver of a motor vehicle for an alleged restraining device violation."

From where I sit, I see very little difference in profiling against a Handicapped person as against any other class of people. We are covered by the Americans with Disabilities Act as stated in the Code of Federal Regulations Title 35 Section 178. As will be described below, the House can fix this problem with a fairly simple change to the overall bill.

Problem Number 2:

There is some confusion about whether or not the bill exempts people with my condition or not. This stems from the following:

Section 4 (3)(d) "A person with a MEDICAL condition whose CONDITION prevents appropriate restraint by a safety belt system if THE person possesses a written statement by a physician certifying the condition as well as stating the reason why such restraint is inappropriate."

However, this section is really only the DEFINITION of what a MEDICAL CONDITION is, and does not relate to how the law will work in the field. This is covered by Section 5.7 which is the section that actually changes the offense from Secondary to Primary. It is in this section that the Medical Waiver needs to be strengthened.

Section 5.7 (a)

*"A person charged with violating subsection 2 of this section, either as a driver or a front seat passenger shall not be convicted if the person, pursuant to paragraph D of subsection 3 of this section, produces **in court** a bona fide written statement by a physician that certifies a physical disability on the part of the person alleged not to have worn a fastened safety belt and states the reason why restraint by a safety belt system is inappropriate."*

Therefore, while the intent of the legislature is to exempt me from the bill, the way it is worded will force me to become a regular at the various traffic courts around town. This would place a substantial time burden on me, and those who have similar reasons for not wearing seat belts. There is absolutely no reason when the intent of the legislation is to exempt us, to maintain this faulty verbiage that will force us to go to traffic court. Further, what if this traffic court were in another part of the state, we would then be forced to pay the fine since it would be cheaper than going back and showing our documentation. Once again, this is a potential ADA profiling issue with C.F.R. 35.178 issues.

How to Fix Senate Bill 296 from a Physically Challenged Perspective

The good news is that this does not need to stay in the bill.

Problem 2

The easiest to fix is Problem 2. This can be fixed by striking the words IN COURT from Section 5.7 (a) and substituting FOR THE OFFICERS REVIEW in their place. This would be in total compliance with the stated goal of the legislature as noted in Section 4(3)(d) and totally solve the issue of needing to go to court to obtain relief for ones medical waiver.

Problem 1

Problem 1 would require the DMV to administer a hanging tag system similar to the current Handicapped Parking permit system. This should be relatively easy from an enforcement standpoint since the Officer must clear observe and articulate that the belt is not being worn in accordance with section 2(9)(A) of the Bill. If they can see this they could certainly see a small tag created to be highly visible, perhaps of some sort of Day-Glo green or orange.

I realize that there would be a some fiscal impacts of this system. But I believe they would be less in the long run than the liability that Colorado would be facing if it were to continue discriminating against people in my condition. Just remember, each missed meeting, each unnecessary stop is another click on the cumulative meter that will be kept.

To help the Counties offset their costs for this system I would like to suggest that the State of Colorado look into a Parking Program that has been adopted by some of the Counties in Texas. Some of my Handicapped Network has sent me a copy of this program which uses videotapes and volunteers to enforce handicapped parking at local stores and malls. The increase in revenues from a program such as this would more than offset their cost in administering the new hanging tag program.

Finally, Colorado stands to gain \$14 million from this bill. Why should they not spend a miniscule portion of it on meeting the needs of those whose lives would otherwise be severely disrupted?

If further information is needed I can be reached on 303-431-7844.

Sincerely,

Lloyd Kevin Pearson