

which it is not at all. Senator Chambers has accused this body of yammering and yapping and the only yammering and yapping I heard came from that corner of the Chamber. According to Senator Morehead, the sponsor of the bill, the Department of Transportation is requiring states that pass seat belt legislation, is requiring those states to have a provision which says that the failure to wear a seat belt can be used in a lawsuit to claim that the person who was injured should have worn the seat belt, and his failing to do so will mitigate the damages or reduce the damages, reduce the damages that that person would otherwise have recovered. Senator Morehead says that the bill must contain a mitigation of damage provision and it does. It does. This body has faithfully kept that provision in the bill. If you go through your bill book, you will find that the bill provides that the failure to wear the seat belt may not be used in a lawsuit on the issue of liability or on the issue of proximate cause of the injury but it may be used in a lawsuit to mitigate the damages. I didn't put that provision there. Senator Hoagland didn't put that provision there. Senator Beutler didn't put that provision there. Senator Chambers didn't put it there. It is there. It is part of the overall package of amendments. Senator Beutler, Hoagland and I simply say it is not fair, it is not fair to require the person who did not wear the seat belt and who was injured at the hands of some negligent person to in effect lose all the damages that could flow from the injury because of the failure to wear the seat belt, and we simply limit it. It is a cap. It is like a Howard Lamb cap. We say if mitigation is at issue, then the most damages that could be lost is 5 percent. That is all we say, the most. It doesn't have to be five, it could be four, it could be three, it could be two, it could be one. It is whatever the jury sets but not more than 5 percent. This was what the Legislature of Missouri adopted when it adopted a seat belt law. It conformed to the Department of Transportation requirement, requirement that the failure to wear the seat belt could be used in the lawsuit to mitigate damages, okay, but it said, hey, it can only be used to reduce damages by 5 percent. Now let me give you the most graphic example that I can give you of this issue. You got a letter from a 19 year old Omaha man who said he was in a car accident and he was thrown through the windshield of his car onto the pavement and he broke his spine and he is a paraplegic. And he said if he had worn his seat belt, he would simply have had an abdominal bruise and he would have been able to walk