

## HOUSE BILL No. 2305

By Committee on Insurance

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9 AN ACT concerning insurance; relating to uninsured motorist coverage;  
10 amending K.S.A. 40-284 and repealing the existing section.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 40-284 is hereby amended to read as follows: 40-  
14 284. (a) No automobile liability insurance policy covering liability arising  
15 out of the ownership, maintenance, or use of any motor vehicle shall be  
16 delivered or issued for delivery in this state with respect to any motor  
17 vehicle registered or principally garaged in this state, unless the policy  
18 contains or has endorsed thereon, a provision with coverage limits equal  
19 to the limits of liability coverage for bodily injury or death in such auto-  
20 mobile liability insurance policy sold to the named insured for payment  
21 of part or all sums which the insured or the insured's legal representative  
22 shall be legally entitled to recover as damages from the uninsured owner  
23 or operator of a motor vehicle because of bodily injury, sickness or dis-  
24 ease, including death, resulting therefrom, sustained by the insured,  
25 caused by accident and arising out of ownership, maintenance or use of  
26 such motor vehicle, or providing for such payment irrespective of legal  
27 liability of the insured or any other person or organization. No insurer  
28 shall be required to offer, provide or make available coverage conforming  
29 to this section in connection with any excess policy, umbrella policy or  
30 any other policy which does not provide primary motor vehicle insurance  
31 for liabilities arising out of the ownership, maintenance, operation or use  
32 of a specifically insured motor vehicle.

33 (b) Any uninsured motorist coverage shall include an underinsured  
34 motorist provision which enables the insured or the insured's legal rep-  
35 resentative to recover from the insurer the amount of damages for bodily  
36 injury or death to which the insured is legally entitled from the owner or  
37 operator of another motor vehicle with coverage limits equal to the limits  
38 of liability provided by such uninsured motorist coverage to the extent  
39 such coverage exceeds the limits of the ~~bodily injury coverage carried by~~  
40 ~~the owner or operator of the other motor vehicle~~ *amount of liability pro-*  
41 *ceeds actually available to an injured insured.*

42 (c) The insured named in the policy shall have the right to reject, in  
43 writing, the uninsured motorist coverage required by subsections (a) and

1 (b) which is in excess of the limits for bodily injury or death set forth in  
2 K.S.A. 40-3107 and amendments thereto. A rejection by an insured  
3 named in the policy of the uninsured motorist coverage shall be a rejection  
4 on behalf of all parties insured by the policy. Unless the insured  
5 named in the policy requests such coverage in writing, such coverage need  
6 not be provided in any subsequent policy issued by the same insurer for  
7 motor vehicles owned by the named insured, including, but not limited  
8 to, supplemental, renewal, reinstated, transferred or substitute policies  
9 where the named insured had rejected the coverage in connection with  
10 a policy previously issued to the insured by the same insurer.

11 (d) Coverage under the policy shall be limited to the extent that the  
12 total limits available cannot exceed the highest limits of any single appli-  
13 cable policy, regardless of the number of policies involved, persons cov-  
14 ered, claims made, vehicles or premiums shown on the policy or premi-  
15 ums paid or vehicles involved in an accident.

16 (e) Any insurer may provide for the exclusion or limitation of  
17 coverage:

18 (1) When the insured is occupying or struck by an uninsured auto-  
19 mobile or trailer owned or provided for the insured's regular use;

20 (2) when the uninsured automobile is owned by a self-insurer or any  
21 governmental entity;

22 (3) when there is no evidence of physical contact with the uninsured  
23 motor vehicle and when there is no reliable competent evidence to prove  
24 the facts of the accident from a disinterested witness not making claim  
25 under the policy;

26 (4) to the extent that workers' compensation benefits apply;

27 (5) when suit is filed against the uninsured motorist without notice  
28 to the insurance carrier; and

29 (6) to the extent that personal injury protection benefits apply.

30 (f) An underinsured motorist coverage insurer shall have subrogation  
31 rights under the provisions of K.S.A. 40-287 and amendments thereto. If  
32 a tentative agreement to settle for liability limits has been reached with  
33 an underinsured tortfeasor, written notice must be given by certified mail  
34 to the underinsured motorist coverage insurer by its insured. Such written  
35 notice shall include written documentation of pecuniary losses incurred,  
36 including copies of all medical bills and written authorization or a court  
37 order to obtain reports from all employers and medical providers. Within  
38 60 days of receipt of this written notice, the underinsured motorist cov-  
39 erage insurer may substitute its payment to the insured for the tentative  
40 settlement amount. The underinsured motorist coverage insurer is then  
41 subrogated to the insured's right of recovery to the extent of such payment  
42 and any settlement under the underinsured motorist coverage. If the  
43 underinsured motorist coverage insurer fails to pay the insured the

1 amount of the tentative tort settlement within 60 days, the underinsured  
2 motorist coverage insurer has no right of subrogation for any amount paid  
3 under the underinsured motorist coverage.

4 Sec. 2. K.S.A. 40-284 is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its  
6 publication in the statute book.