

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Chairman Rex Hoy at
Chairperson

3:30 ~~am~~/p.m. on February 22, 1983 in room 521 S of the Capitol.

All members were present except:
Rep. Fuller, who was excused.

Committee staff present:
Wayne Morris, Legislative Research
Gordon Self, Revisor's Office
Mary Sorensen, Committee Secretary

Conferees appearing before the committee:
L. M. Cornish, for Kansas Association of Property and Casualty Insurance Companies
Larry Magill, for Independent Insurance Agents of Kansas
Dick Scott, for State Farm Insurance Companies
David Ross, for Farmers Insurance Group
Rep. Robert Vancrum, Sponsor of HB 2062
John Brookens, for Kansas Bar Association
Kathleen Sebelius, for Kansas Trial Lawyers Association

Others Present:
See List (Attachment 1) Pages 1 and 2

L. M. "Bud" Cornish, representing the Kansas Association of Property and Casualty Insurance Companies, was first to speak in favor of HB 2248. He said their organization thought the present No-Fault law had worked very well but, with inflation, it needed adjusting. They thought the benefits package should be increased, and they would prefer a threshold higher than the one proposed in HB 2248 but they would settle for that figure. There was discussion as to whether or not passage of this bill would result in increased premiums for the consumer. Homer Cowan, of the Western Companies, said there would be rate increases within six months whether or not this bill passes.

Larry Magill, representing the Independent Insurance Agents of Kansas, then spoke in support of HB 2248. He passed around written testimony (Attachment 2). He said their organization was in favor of the indexing portion of the bill, and thought it should not be compared with social security, and urged the committee to pass out HB 2248 favorably.

James R. Oliver, Executive Director of the Professional Insurance Agents of Kansas, provided written testimony (Attachment 3) stating their association supports HB 2248 in its original form.

Dick Scott, representing the State Farm Insurance Companies, then spoke in favor of the bill, and gave some statistics on No-Fault benefits and thresholds in other states. David Ross, of the Farmers Insurance Group, also spoke briefly in support of HB 2248. There were questions about how many lawsuits might be kept out of court if the threshold was raised, and what has happened since 1973 to request the threshold raised from \$500 to \$2,500. It was again brought out that in 1973 all figures indicated the threshold should be \$1,000 and the bill passed out of the insurance committee at that figure, but it was amended on the floor of the House and reduced to \$500. Therefore the \$1,000 figure has been used this year as the base in computing the requested increase to \$2,500.

HB 2062 was next to be considered. Rep. Vancrum passed around written testimony in support of his bill (Attachment 4). He read the testimony and urged passage of the bill, with the balloon amendment on the third page of the testimony. John Brookens spoke briefly, and said the Kansas Bar Association supports the bill. Kathleen Sebelius of the Kansas Trial Lawyers said that association also supports the bill. Dennis McFall, representing the Kansas Association of School Boards, said they supported the bill but had discussed with Rep. Vancrum amending into the bill that political entities would be exempt. Rep. Vancrum said he would have no objection to such an amendment.

The meeting adjourned at 4:45 PM.

Testimony on HB 2248
By: Larry W. Magill, Jr.
Independent Insurance Agents of Kansas

The Independent Insurance Agents of Kansas wholeheartedly support the updating of our personal injury protection benefits and the tort threshold contained in the Kansas Auto Injury Reparations Act or no-fault embodied in HB 2248. We firmly believe that the concept of no-fault has worked in Kansas, is working and will continue to work so long as the tort threshold contained in the law remains meaningful.

We consider no-fault to be a consumerist issue in the broadest sense of the word since it is intended to put a lid on escalating auto insurance costs, which is our only reason for involvement in this issue. In the two and one half years I have been with the association, we have received no complaints from our 673 member agencies across the state regarding no-fault. We would not be here today supporting HB 2248 if no-fault had not met with resounding acceptance from the Kansas public. Our members' approximately 2,500 employers deal with the auto insurance consumer and claimant daily and would be seriously concerned if no-fault was not accepted.

Unfortunately, the favorite expression of economists, "All other things being equal," cannot be applied in the real world. In Kansas, for example, it has been impossible to measure the impact of the original passage of no-fault. However, it is known that auto insurance rates in Kansas have been stable and that auto insurance rates have gone up less than the cost of the goods and services paid for by the auto policy. For example, from September, 1981 to September, 1982, the National CPI increase for auto insurance was 5.7% while the increase for auto maintenance and repairs was 7.3%, the increase for medical care charges was 11.4%, the increase for physicians' charges was 9% and the increase for hospital room charges was 15.3%. A number of factors besides no-fault could account for the stability

in auto insurance costs including higher gasoline prices and the 55 mile per hour speed limit.

We support HB 2248 because it increases first party benefits and returns more of the premium dollar to the consumer in direct benefits while spending less defending expensive suits for alleged pain and suffering. The insured is able to go to his or her agent and their insurance company for payment of their medical expenses, loss of income and other PIP benefits rather than going through the inconvenience of dealing with someone else's agent and insured. The Insurance Department initially set the medical expense limit of \$2,000 at a level where their actuary estimated that this would cover 90% of the automobile injury victim's expenses.

The no-fault concept is not new. It has been in existence and working extremely well in workers' compensation since the early 1900's. An expensive, unjust and inequitable system of common law liability for workers' injuries that often favored the employer was replaced with state mandated benefits guaranteed to the worker. In return, workers gave up their right to sue for pain and suffering completely - there is no threshold in workers' compensation. Yet I am sure if workers' compensation were a new concept today, it would meet stiff opposition from the same interests.

To keep auto no-fault viable, the effects of inflation must be recognized not only on the direct, first party PIP benefits but also on the threshold. There have been criminal cases in Kansas of attorneys and doctors colluding to exceed the current \$500 threshold. This would be much harder to accomplish and considerably more obvious at the proposed \$2,500 level. It makes no sense at all to argue that PIP benefits should be increased and at the same time ignore that increased medical costs are steadily eroding the impact of our \$500 threshold.

It is equally inaccurate to argue that under no-fault you may have no right to recover from "the guy who runs the red light and broadsides you." No-fault in no way affects an individual's right to sue for actual (pecuniary) bodily injury and property damage losses from the first dollar of loss. It does restrict a party's right to sue for pain and suffering (nonpecuniary) damages to more serious cases where the medical costs exceed the current threshold including the verbal threshold of "permanent disfigurement, a fracture to a weight bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function or death." HB 2248 does not change these existing "thresholds." In effect, the dollar threshold is designed to deal with the so-called soft tissue injuries such as backs and necks that show no obvious injury and are so difficult to evaluate.

The Independent Insurance Agents have historically opposed the state mandating either first or third party insurance coverages. The only reason we support mandating PIP benefits and a tort threshold is because they are balanced to provide no increase in cost to the consumer. Even a small increase in cost such as the KTLA proposes of approximately \$7.20 per year per consumer when multiplied times the 1,250,000 registered vehicles in Kansas amounts to \$9,000,000. If you assume, as the KTLA has, that one half the autos carry higher PIP limits voluntarily, this is still a \$4,000,000 "hidden tax" on consumers in Kansas to benefit a few. Kansas has already mandated higher bodily injury and property damage liability limits, higher minimum mandatory uninsured motorists coverage, all new mandatory underinsured motorists coverage equal to the state minimum liability limits, all of which cost the consumers of Kansas a substantial amount of money. HB 2248 is a step towards controlling auto insurance costs rather than increasing them.

The indexing feature contained in HB 2248 is a critical aspect of the legislation. Not only will it prevent continued legislative battles over "well worn" ground but it will also guarantee to Kansas consumers that the coverages and cost containment aspects of our current law will keep pace with inflation. Inflation in medical costs have a very real and direct impact on the needed PIP benefits as well as the threshold, yet this will cost consumers nothing. For that reason there is no correlation to social security where those still working must fund pension benefits for retired people. The index feature of HB 2248 is necessary to keep the no-fault concept viable.

Another factor for the committee to consider is the competitive nature of the insurance industry including the auto insurance area in Kansas. With over 900 companies licensed to write property and casualty insurance in the state, any mechanism that allows companies to keep the lid on insurance costs will be passed on to the consumer.

HB 2248 represents a compromise in its present form. The industry believes in a no-fault concept which should be based on a verbal threshold similar to what was proposed to the 1981 Legislature. The Insurance Department feels that the \$2,500 threshold being proposed in 1983 represents a justifiable increase simply based on inflation from the original threshold of \$1,000 indicated by their actuarial report in 1973. HB 2248 is a very moderate updating of our present no-fault law and we urge the committee to recommend this legislation favorably for passage without amendment.



James R. Oliver, Executive Director ■ 701 Jackson St., Topeka, Kansas 66603 ■ Phone (913) 233-4286

TESTIMONY BEFORE THE HOUSE INSURANCE COMMITTEE - FEBRUARY 22, 1983

My name is Jim Oliver. I am the Executive Director of the Professional Insurance Agents of Kansas. Our association supports HB 2248 in its original form. We firmly believe the bill in its original form will benefit the greatest number of the people of Kansas.

James R. Oliver





State Farm Mutual Automobile Insurance Company

February 24, 1983

State Farm Insurance Claim Office
5725 Foxridge Drive
P.O. Box 2913
Mission, Kansas 66201

Mr. Rex B. Hoy
Chairman of House of Representatives Insurance Committee
State Capitol Building
Room 280-W
Topeka, Kansas 66612

RE: House Bill 2248 - No Fault Insurance

Dear Chairman Hoy:

Following my statement before your Committee on February 22, 1983, several of the Committee members requested a written statement. I have also received a request from Mr. Mike Heim of the Legislative Research Department and a copy of this letter will be directed to him.

I am a Kansas attorney and a member of the Kansas Bar Association. Nearly all of my 26 years of experience in handling insurance claims, supervising claims, and managing a claim operation, including litigation, have been in Kansas. This is the first time that I have had the opportunity to address this Committee, but I am certain that it will not be the last. I promise to never knowingly mislead a Legislator nor will I insult your intelligence by resorting to emotionalism when it is facts and information that you need and seek.

State Farm Insurance Companies are the leading writer of personal lines in the country. The Auto Company insures upward toward 25 million vehicles in the United States. The Fire Company is the leading homeowners insurance company in the nation, and our life affiliate is either sixth or seventh in volume. We have a fast growing health company and have lesser commitments in the area of commercial lines.

State Farm insures over 400,000 automobiles in the State of Kansas. To put that in perspective, State Farm insures one out of every five vehicles on the roadways. We are also the leading homeowners insurer in Kansas.

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There are 340 local State Farm agents and agency managers within this State and they employ some 510 employees. There are 203 Claim Service Office employees servicing every community in the State. The combined employees and associates for State Farm amount to more than 1,000 people.

We certainly do not mention these figures to boast of size. Big is bad insofar as public relations are concerned. However, we do want you to understand that State Farm has a substantial interest in what this Legislature does to and for the Kansas insurance industry and how your actions affect our nearly half million policyholders.

Additionally, we believe that this network of policyholders, agents and employees, provides us with an insight - a pipeline if you will, as to how the insurance public feels and reacts to insurance developments. We certainly do not receive the impression that our people who receive injuries from which they quickly recover are much concerned about recovering general damages, that is amounts above the out-of-pocket expenses which they have incurred. This is especially true where these people are paid for their out-of-pocket expenses (medical-wages) promptly and without the fuss and bother of a determination of accident responsibility.

House Bill 2248 is not the No-Fault Bill which we would have liked to see this Legislature enact. We believe that the only real meaningful no-fault reform must include a verbal threshold (a statement of when the injured party can claim general damages in terms of degree of injury and disability as opposed to a monetary threshold - in terms of the amount of medical expense which must be incurred). However, we respect the insight and understanding of public desires of the Kansas Insurance Department and the Kansas insurance industry generally. For that reason we endorse House Bill 2248 and do believe that it is a substantial improvement over the present law.

I am enclosing a chart which compares the Kansas No-Fault Law with the other 23 states or jurisdictions which have adopted some form of no-fault legislation. It is of significance that the Kansas PIP benefit package is among the lowest. Only one state is lower and only seven states are the same. That leaves 15 no-fault states with higher minimum benefit requirements.

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It is a significant development that the District of Columbia has recently enacted no-fault legislation, including a \$5,000.00 medical threshold and a CPI indexing of monetary limits.

Much has been said by opponents of 2248 as to the fact that the \$500.00 medical threshold is being increased five times to \$2,500.00 whereas the benefit package is generally being increased only 2 1/2 times. Believe me, we are talking about "apples and oranges." The relationship between the threshold and the benefits is not of a nature that can be subjected to the same ratio of increase.

Let us start with the fact that there are about 50 percent of the policyholders, some 625,000 Kansas car owners, who have the minimum limits of \$2,000.00 medical and \$650.00 per month wage loss. To a large extent these are the people who most need insurance and can least afford it. They will feel the effect of any premium increase, even if it is only \$7.00 to \$9.00. We do not believe that the insuring public will feel kindly toward legislation which mandates an increase in automobile insurance premiums.

Let us concede that there is the need to increase the benefit package without increasing premium. So where do you get the \$7.00 to \$9.00 necessary to finance the increased benefit package? You get it from where the no-fault concept has always got it. By limiting the general damages, blue sky, recovery from those who have suffered the lesser injuries. This does not limit their right to out-of-pocket losses (medical-wages), but only limits the general damages (recovery beyond actual out-of-pocket losses). It does not deny these people access to the Courts.

To gain enough premium saving from the limitation on general damages, the threshold must be placed high enough to reduce liability payments and thus liability premiums by the \$7.00 to \$9.00. That has been calculated by the Insurance Department to be a \$2,500.00 medical threshold.

Remember that the medical expense threshold is only one of eight ways the injured party can get into the general damages arena.

1. Medical expenses.

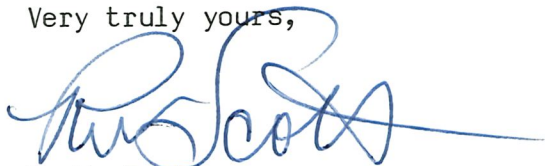
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2. Fracture of a weight bearing bone.
3. Disfigurement.
4. Comminuted, compound, displaced, compressed fracture.
5. Loss of body member.
6. Permanent injury.
7. Loss of bodily function.
8. Death.

The attorneys have said that there is no need to raise the threshold because pending lawsuits are not increasing. Please understand that few injury cases end up in lawsuits and most lawsuits are settled. It is not the number of pending lawsuits but the number of injury claims which must be considered. The 1973 threshold, including the \$500.00 medical threshold, eliminated some 60 percent of general damage claims. Today the same thresholds eliminate only about 40 percent of the claims.

Again, we believe that your passage of House Bill 2248 will benefit the Kansas motoring public.

Very truly yours,



R. W. Scott
DIVISIONAL CLAIM SUPERINTENDENT

RWS/mmd/36B-24-27

cc-Mr. Mike Heim
Legislative Research Department

KANSAS NO-FAULT LAW
Compared to Other No-Fault States

1. 24 States, including Kansas, have No-Fault Laws.

2. THRESHOLD - (\$500.00 Medical)

	<u>No Threshold</u>	<u>Lower Threshold</u>	<u>Higher Threshold</u>	<u>Same Threshold</u>	<u>Verbal Threshold</u>
<u>No. of States</u>	7	2	6 (+3 verbal)	5	3

3. THRESHOLD - (\$2,500.00 Medical)

	<u>No Threshold</u>	<u>Lower Threshold</u>	<u>Higher Threshold</u>	<u>Same Threshold</u>	<u>Verbal Threshold</u>
<u>No. of States</u>	7	11	2 (+3 verbal)	7	3

4. BENEFITS (\$2,000.00 Medical)

	<u>Higher</u>	<u>Lower</u>	<u>Same</u>
<u>No. of States</u>	15	1	7

5. BENEFITS (\$4,900.00 Medical)

	<u>Higher</u>	<u>Lower</u>	<u>Same</u>
<u>No. of States</u>	14	9	None
	(includes 3 @ \$5,000)		

BOB VANCURUM
 REPRESENTATIVE, TWENTY-NINTH DISTRICT
 OVERLAND PARK
 9004 W. 104TH STREET
 OVERLAND PARK, KANSAS 66212



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN FEDERAL AND STATE AFFAIRS
 MEMBER LABOR, PENSION AND TAXATION
 EDUCATION

HB 2062

Testimony of Robert J. Vancrum

To: House Insurance Committee - February 22, 1983

Thank you Mr. Chairman and members of the committee for giving me an opportunity to appear before you today. HB 2062 is intended to very simply reverse the ruling of the Guarantee Abstract case, 228 Kansas 532, in which the Supreme Court of Kansas stated that the public policy of Kansas does not permit an employer to purchase insurance *which will reimburse him for covering* punitive damages assessed against his employees or agents, even if he had no prior knowledge of the acts or omissions of his employee or agent and had no way to prevent the same.

Perhaps a brief example would help in illustrating why this rule of law is nonsense when viewed from the point of view of usual business practice. First, assume that a trucking company employees a driver for several years without incident, but he thereafter is held to have caused an accident which caused serious injuries to another motorist. If the jury finds the driver guilty of negligence, both he and the company are obligated to pay all actual damages. The company of course did not authorize him to drive negligently, but they can at least insure themselves against this possibility. If the jury is sufficiently impressed that the drivers' actions were in reckless disregard of the law or the rights of other motorists, they can award amounts exceeding the actual damages as punitive damages intended to "punish" the wrongdoer

Atch. 4

including the trucking company. In such an event the trucking company is still no more able to control the acts of its employee--in fact it may not have even been aware of them. But here the Kansas Supreme Court steps in and says we are not going to permit insurance companies to reimburse the company.

The overwhelming majority of states permit the reimbursement of punitive damages to an innocent employer. The usual rule is stated in *Northwestern National Casualty Company*, 307 F. 2d 432. The 1980 Kansas decision of Guarantee Abstract is so new and so far out of the mainstream of usual case law in this country that most policies on their face appear to provide coverage in this situation. However, you may be sure that the claims adjusters in the home offices are beginning to become aware that they have no obligation to reimburse such a claim if it arises in Kansas.

We are trying to build a climate in Kansas favorable for the stability and growth of business. The rule of law as established in the Guarantee Abstract case clearly serves no public purpose. I would not argue today that you should permit an insured to be reimbursed for intentional misconduct of his own. I would not even suggest that insurance companies should be required to provide insurance against unauthorized intentional misconduct of the employees of the insured.

This bill is intended to only state that if an insurance company issues a policy covering liability for punitive damages assessed because of the acts of an insured's employees, it can pay off on his insurance without violating the public policy of Kansas. I certainly hope you will give this bill prompt and favorable consideration. Because the language in lines 22 thru 25 may be broader than I intended, I have attached a balloon of this bill containing a sentence which not only reads better, but is narrower than the original. I urge you to amend the bill as indicated in the balloon.

HOUSE BILL No. 2062

By Representative Vancrum

1-20

0015 AN ACT relating to insurance; concerning coverage of liability
0016 for punitive damages.

certain

or exemplary

0017 *Be it enacted by the Legislature of the State of Kansas:*

0018 Section 1. (a) It is not against the public policy of this state
0019 for a person or entity to obtain insurance ~~coverage reimbursing~~
0020 ~~any liability for punitive damages assessed against the person or~~
0021 ~~entity as the result of an intentional tort committed by an em-~~
0022 ~~ployee, agent or servant of such person or entity, or of a person or~~
0023 ~~entity associated in business with such insured person or entity,~~
0024 ~~without the prior knowledge of such person or entity or without~~
0025 ~~authorization of such person or entity.~~

covering liability for punitive or exemplary damages assessed against such insured as the result of acts or omissions (intentional or otherwise) of such insured's employees, agents or servants, or of any other person or entity for whose acts such insured shall be vicariously liable, without the actual prior knowledge of such insured.

0026 (b) The type of coverage specified in subsection (a) may be
0027 provided by insurance companies doing business in this state.

0028 Sec. 2. This act shall take effect and be in force from and after
0029 its publication in the Kansas register.