

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on March 29, 1983 in room 529-s of the Capitol.

All members were present except:

Sen. Reilly - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor's Office

Conferees appearing before the committee:

Larry Magill, Independent Insurance Agents of Kansas
Mark Bennett, American Insurance Association
Ron Todd, Kansas Insurance Department
Bill Schutte, Office of the Securities Commissioner
Dick Scott, State Farm Insurance Companies
David Ross, Farmers Insurance Group
Homer Cowen, Western Insurance Companies
Kathleen Sebelius, Kansas Trial Lawyers Association
Joseph Vader, Kansas Trial Lawyers Association
John Brookens, Kansas Bar Association

The minutes of March 25 were approved.

The hearing began on HB 2485 dealing with the extension of credit to policyholders by an agent and cancellation of insurance for nonpayment. Larry Magill, Independent Insurance Agents of Kansas, gave testimony in support of the bill. (See Attachment I). He also offered an amendment to the bill which would make two changes on lines 47 and 50. (See Attachment II). Mr. Magill answered questions from the committee relating to the open credit extended by agents for payment of policy premiums and the cancellation of policies due to nonpayment by the insured to the agent.

Mark Bennett, American Insurance Association, appeared in support of HB 2485 and stated that he supports Mr. Magill's testimony. He added that he feels that the bill could be improved by striking the sentence on line 50 beginning with "Any such". He would further change the bill on line 53 following the word "for" by striking the words "all policies" and inserting in lieu thereof the words "the policy", and strike the balance of line 53 and all of line 54.

Ron Todd, Kansas Insurance Department, confirmed Mr. Magill's statement earlier that the problem has been raised often by agents and stated that the Insurance Department supports HB 2485. He agreed that the amendment on line 50 added by the House is not needed with the amendment offered by Mr. Magill.

The hearing began on SB 413 which amends the Kansas Securities Act relating to exempt transactions. Bill Schutte, office of the Securities Commissioner, appeared in support of the bill and said that the introduction of the bill was requested by the Securities Commissioner. He explained that the bill is needed to clarify what was done last year to make sure that problems involving advertising of offerings and cumulative transactions are covered. The language in the bill last year regarding this was ambiguous and incomplete.

The hearing began on HB 2437 regarding automobile liability insurance coverage. Dick Scott, State Farm Insurance Companies, appeared in opposition to the amendment added by the House regarding household exclusion. (See Attachment III).

David Ross, Farmers Insurance Group, appeared in support of the bill as drafted as a cost containment measure but shared the same concerns as Mr. Scott had expressed in his testimony regarding the amendment. He added that to take away household exclusion is not healthy for the family unit and brings the adult world of torts into the world of children. He feels that it will put a burden of extra expense on policyholders in

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,
room 529-S, Statehouse, at 9:00 a.m. ~~xxx~~ on March 29, 1983.

these already economically difficult times.

Homer Cowen, Western Insurance Companies, appeared in support of HB 2437. (See Attachment IV). He said that he could support Mr. Scott and Mr. Ross regarding the household exclusion but that it is a philosophical question. He feels that if the law of the land allows for a claim of this kind, there should be insurance protection for it. He concluded by saying that the bill is good with or without the household exclusion amendment.

Kathleen Sebelius, Kansas Trial Lawyers Association, appeared in support of the bill with the household exclusion amendment. She said that commercial exemption is necessary to avoid double coverage and that the law of the land in Kansas says that a child can sue for injuries so there should be insurance to cover this.

Joseph Vader, Kansas Trial Lawyers Association, appeared in support of HB 2437. He told the committee of his personal interest in the bill as a result of an accident involving his daughter who was in his car which was being driven by a non-family member. His policy did not cover his daughter's injury because it did not cover family members. He feels that the insurance companies' objection to the household exclusion amendment expresses a feeling that family members can't trust each other and that the legal system can't be trusted either. Mr. Vader said that he could not agree with this philosophy and that lawyers won't represent fraudulent claims. He also feels that the extra cost of premiums would be worth the coverage available for your family members.

John Brookens, Kansas Bar Association, appeared in support of HB 2437. He agreed with Mr. Cowan that if the law of the land allows for a claim of this kind, there should be insurance protection for it. He said that it gives protection to all injured by negligence of the driver, including family members of the policyholder. He feels that if it comes to trial, the truth will prevail and that the House floor amendment is good policy and is fair.

Mark Bennett, American Insurance Association, appeared in support of the bill and supported Mr. Cowan's testimony.

There being no further time, the chairman said that he would try to find a time later today for the hearing on HB 2437 to continue.

The meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3/29	Dick Scott	Missouri	State Farm Ins.
	Homer Cowan	Ft Scott	Western Ins Co
	Gene G. Smith	Topeka	alliance of Am Ins
	LM CORNISH	"	Ks Assoc of P & C Cos
	Mark G. Smith	Topeka	Am Ins Assoc
	Wilson M. Smith	Topeka	Office of the Secretary Commission
	Richard F. Smith	Topeka	ADA
	Steve Anderson	"	Kansas Bar Assn
	Jim Oliver	"	Prof Ins Agts of Ks
	Tim Underwood	Topeka	KAR
	Josh Nader	Olath	KTLA
	Steve Selvin	Topeka	KTLA
	Ron Todd	"	Ins. Dept.

Testimony on HB 2485
By: Larry W. Magill, Jr., Executive Manager
Independent Insurance Agents of Kansas

Thank you for this opportunity to appear in support of House Bill 2485, a measure we requested the House Insurance committee introduce. Basically, HB 2485 amends K.S.A. 40-282, a statute which provides insurance agents the ability to extend credit to customers either: 1) on less than 30 days at no interest; 2) for more than 30 days at a rate of interest of $1\frac{1}{2}\%$ per month without a written instrument on open account or; 3) as provided in a written instrument so long as the interest rate does not exceed that allowed by K.S.A. 16-207. Our amendment simply adds a clarification that an agent who has not been paid may cancel an insured's policies to collect any unpaid amount with the excess unearned premium, if any, paid to the insured.

Independent insurance agents represent a number of insurance companies. The agent generally pays for their insured's policies monthly on what is known as an "account current" or consolidated billing covering all policies issued through that company that month. If the agent extends open account credit to an insured it very often happens that the agent pays or advances, the insured's premium to the company before the agent is fully paid. If the insured later refuses to pay or is unable to pay according to their agreement, the agent should have the option of cancelling the coverage according to the policies' terms, and applying the unearned premium for the remainder of the policy period to the insured's balance. Any excess unearned premium would be returned to the policyholder.

Most personal insurance, homeowners, auto, life and health is on a "direct billed" basis where the insurance company bills the insured direct and provides whatever payment plan it desires. But some miscellaneous

Attachment I

personal insurance such as floaters and umbrella liability policies are billed by the agent as well as virtually all commercial insurance coverages.

A typical commercial account may have 3 to 4 policies all with different expiration dates. The insured may owe some on all policies at any one time or only one. If the insured, for example, buys another business, it would cause additional premiums on all policies when coverage is added for the new entity. If the insured then gets into financial difficulty and is unable to pay the additional premiums, the agent needs to be able to cancel coverage and have a lien on the return premiums to the extent of the earned premium the agent has advanced to the company. After all, it was the agents' money paid to the insurance company in the first place.

Other examples include various state mandated "assigned risk" plans such as the "FAIR Plan" for property insurance covering fire and other perils, the Kansas Auto Insurance Plan and the Health Care Providers Insurance Availability Plan. Occasionally an agent may advance his own money for an insured to one of these plans and the agent should have the right to request cancellation for nonpayment of the account.

Providing "open account" credit to insureds is a customer service independent agents want to offer. It makes it easy to bind coverage over the phone and is the only way to properly handle commercial (business) accounts. House Bill 2485 protects the agent extending "open account" credit by allowing the agent to cancel coverage if necessary to use the unearned premium on the insured's policies to pay the debt owed. It gives the agent a clear lien against the unearned premium - the money the agent advanced for the client. We urge the committee's support of HB 2485.

Request the company to

and except for policies paid by an escrow agent or paid direct by an insured to an insurance company or where the insured specified that payment apply to a specific policy and all premiums due on that policy have been paid.

0045 (b) Any insurance agent ~~or broker~~ extending credit to poli-
 0046 cyholders as provided in subsection (a) (1) or (2) of this section
 0047 may cancel such insurance according to the terms of the policies
 0048 ~~on a pro rata basis~~ for nonpayment of the policyholders' ac-
 0049 counts, except as provided in K.S.A. 40-277 and amendments
 0050 thereto. Any such cancellation shall be construed as cancellation
 0051 by the insurance company such agent represents.
 0052 Such insurance agent ~~or broker~~ shall have a lien on any return
 0053 premium for ~~the~~ all policies of the same policyholder to the
 0054 extent of ~~the amount~~ amounts owed by the policyholder.
 0055 Sec. 2. K.S.A. 40-282 is hereby repealed.
 0056 Sec. 3. This act shall take effect and be in force from and
 0057 after its publication in the statute book.

Attachment II

PRESENTATION TO THE KANSAS SENATE COMMITTEE
ON COMMERCIAL AND FINANCIAL INSTITUTIONS

RE: HOUSE BILL 2437
SPECIFICALLY: HOUSEHOLD EXCLUSION

By State Farm Insurance Companies
Represented by Richard Scott

Laws which mandate enlargement of coverage and benefits are by and large pass-through expense items which increase the size of insurance premiums. Since most insurance companies desire to grow, and growth is mainly measured by the volume of premium dollars, insurance companies should not logically resist the passage of such laws. In times past, most insurance companies took exactly that approach, as did State Farm.

However, in more recent years the insurance industry generally, and State Farm specifically, has felt the need to provide input into the enactment of legislation affecting the insurance business, especially the cost of the product. A part of this change in attitude has to do with the recognition that insurance must be kept affordable to the general public. Secondly, we find that the policyholders look to the company to provide input into the enactment of good legislation.

It is because of this that we appear before you in opposition to the House Floor Amendment which would prohibit use of the Household Exclusion in automobile liability policies.

It is very important that we all understand the purpose of liability insurance. The policyholder buys liability coverage to protect his own assets (money and property) against claims made against him by others. The fact that injured parties benefit from the existence of liability coverage is incidental to the true reason why the policyholder pays his premium. Remember, liability coverage protects the defendant, not the injured plaintiff who brings the lawsuit against him.

Exclusions in liability policies are primarily for the purpose of making the policy affordable. Some exclusions are for the purpose of taking out of the policy risks which are the subject of specialized insurance. Such exclusions deal with Workman's Compensation, automobile business, et cetera.

Attachment III

Other exclusions, such as the Household Exclusion, are for the purpose of:

1. Excluding coverage where no claim would be presented against the insured except for the fact that insurance coverage exists.
2. Avoiding fraudulent claims.
3. Avoiding collusion among family members.

Difficulties which arise where a family member sues family member and there is liability insurance coverage:

1. Funds that come to the family generally benefit the entire family. Therefore, such claims are like making a claim against one's self.
2. Lawsuits are designed to be adversary proceedings. Where the defendant (father) will benefit from the plaintiff's (child) recovery, how can there be an adversary proceeding? What kind of defense will the father present where he wants his son to recover?
3. Fraudulent schemes within the family can be designed to bring an injury within the liability of the parent.
4. Where a legitimate accident and injury occur, it is very tempting to slant the truth to bring the claim within the liability of the parents.

If insurance coverage is needed for family members who are injured in automobile accidents, such insurance should be made available on a voluntary basis and should be first party coverage. We should not expand the tort system for the purpose of providing insurance coverage to these injured parties. The tort system brings very uncertain recovery to injured parties and is extremely expensive. Most of that expense is due to a plaintiff attorney's contingent fee of one third to one half of the liability recovery.

The new language of the Household Exclusion which was a part of the original House Bill 2437 provides for coverage in the "Vader" situation. We agree that change is needed. We do not believe that it is in the best interest of the Kansas public or of State Farm policyholders that you bar the Household Exclusion and increase liability rates by five percent. We do not believe our policyholders would be willing to pay the extra premium to provide coverage for themselves in the event their kids sue them.

COMMENTS ON
HOUSE BILL 2437
BY
THE WESTERN CASUALTY AND SURETY COMPANY
THE WESTERN FIRE INSURANCE COMPANY
THE WESTERN INDEMNITY COMPANY
OF
FORT SCOTT, KANSAS

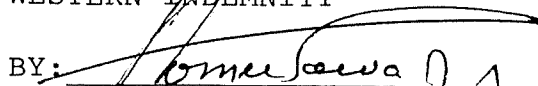
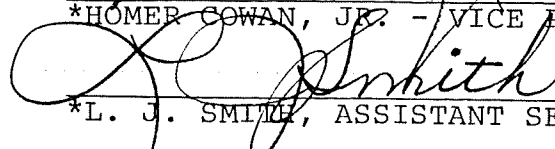
The attachment sets forth our explanation of the proposed amendments to KSA 40-284, 40-3107, and 40-3109.

The Western feels it is imperative to maintain a proper balance between the commercial and private passenger automobile markets within Kansas. Likewise it is imperative that Kansas commercial automobile policies be on an equal basis with all other states. Today this is not the case!

The proposed amendments of HB 2437 will serve the insurance buying public very well by way of avoiding duplication, cost containment and broadening existing coverages.

RESPECTFULLY SUBMITTED,

THE WESTERN CASUALTY AND SURETY COMPANY
THE WESTERN FIRE INSURANCE COMPANY
THE WESTERN INDEMNITY

BY: 
*HOMER COWAN, JR. - VICE PRESIDENT

*L. J. SMITH, ASSISTANT SECRETARY

*Registered Lobbyist

Attachment IV

HOUSE BILL No. 2437

By Committee on Insurance

(By Request)

2-10

0018 AN ACT relating to insurance; concerning automobile liability
0019 insurance coverage; amending K.S.A. 40-284, 40-3107; and
0020 40-3109 and 40-3117 and repealing the existing sections; also
0021 repealing K.S.A. 40-3113a.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 40-284 is hereby amended to read as fol-
0024 lows: 40-284. (a) No automobile liability insurance policy cover-
0025 ing liability arising out of the ownership, maintenance, or use of
0026 any motor vehicle shall be delivered or issued for delivery in this
0027 state with respect to any motor vehicle registered or principally
0028 garaged in this state, unless the policy contains or has endorsed
0029 thereon, a provision with coverage limits equal to the limits of
0030 liability coverage for bodily injury or death in such automobile
0031 liability insurance policy sold to the named insured for payment
0032 of part or all sums which the insured or the insured's legal
0033 representative shall be legally entitled to recover as damages
0034 from the uninsured owner or operator of a motor vehicle because
0035 of bodily injury, sickness or disease, including death, resulting
0036 therefrom, sustained by the insured, caused by accident and
0037 arising out of ownership, maintenance or use of such motor
0038 vehicle, or providing for such payment irrespective of legal
0039 liability of the insured or any other person or organization.

0040 (b) Any uninsured motorist coverage shall include an un-
0041 derinsured motorist provision which enables the insured or the
0042 insured's legal representative to recover from the insurer the
0043 amount of damages for bodily injury or death to which the
0044 insured is legally entitled from the owner or operator of another

HOUSE BILL 2437 - Should be Noncontroversial:

When the present no-fault law was passed in 1973/74, the old financial responsibility laws were repealed. The repealed sections contained permitted exclusions which were part of a standard automobile policy. This standard policy is used in all states. Further, in 1980 a case in the Kansas Supreme Court interpreted the repeal of these exclusions as being the "legislative intent". Thus, all exclusions in the Kansas automobile insurance policy were declared null and void.

Subsequently in 1980, a hurried attempt was made to restore these exclusions with SB 371. Many were. The restored exclusions were those applicable to personal auto policies. These relating to commercial auto policies were overlooked and were not included.

House Bill 2437 attempts to restore the commercial auto policy to its former provisions.

In addition, a number of changes are suggested which would broaden coverage. These changes are needed to clarify the law in certain areas or to improve the delivery of insurance benefits under the auto no-fault statute.

The changes recommended by HB 2437, simply places the Kansas Insurance policy on equal parity with all similar policies sold by the industry across the country. Without these changes, Kansas policyholders will be disadvantaged in respect to policyholders in all other states!

0045 motor vehicle with coverage limits equal to the limits of liability
0046 provided by such uninsured motorist coverage to the extent such
0047 coverage exceeds the limits of the bodily injury coverage carried
0048 by the owner or operator of the other motor vehicle.

0049 (c) The insured named in the policy shall have the right to
0050 reject, in writing, the uninsured motorists coverage required by
0051 subsection (a) which is in excess of the limits for bodily injury or
0052 death set forth in K.S.A. 40-3107 and amendments thereto. Un-
0053 less the insured named in the policy requests such coverage in
0054 writing, such coverage need not be provided in or supplemental
0055 to a renewal policy where the named insured had rejected the
0056 coverage in connection with a policy previously issued to the
0057 insured by the same insurer.

0058 (d) Coverage under the policy shall be limited to the extent
0059 that the total limits available cannot exceed the highest limits of
0060 any single applicable policy, regardless of the number of policies
0061 involved, persons covered, claims made, vehicles or premiums
0062 shown on the policy or premiums paid or vehicles involved in an
0063 accident.

0064 (e) Any insurer may provide for the exclusion or limitation of
0065 coverage when:

0066 (1) *When the insured is occupying or struck by an uninsured*
0067 *automobile or trailer owned or provided for the insured's regular*
0068 *use;*

0069 (2) *when the uninsured automobile is owned by a self-in-*
0070 *surer or the federal government any governmental entity;*

0071 (3) *there is no evidence of physical contact with the unin-*
0072 *surred motor vehicle when there is no evidence of physical*
0073 *contact with the uninsured motor vehicle and when there is no*
0074 *reliable competent evidence to prove the facts of the accident*
0075 *from a disinterested witness not making claim under the policy;*

0076 (4) *to the extent that workers' compensation benefits apply;*
0077 *and*

0078 (5) *when suit is filed against the uninsured motorist without*
0079 *notice to the insurance carrier; and*

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

(1) We are adding "struck by" and "or trailer" to make the exclusion consistent with the intent of the existing language. This is a "clean up" effort in that injuries caused by an owned but uninsured auto or trailer should not qualify for uninsured motorist coverage. As amended this language is consistent with the original intent and will help insure that uninsured motorists coverage premiums will stay as low as possible.

(2) "The federal government" was replaced by "any governmental entity". A self-insured government unit, whether federal, city, county or state, should not be considered uninsured. Otherwise, you are paying premiums for losses caused by a self-insured entity.

(3) This broadens coverage. The existing law requires physical contact between two autos before uninsured motorist coverage is applicable. This is the "phantom vehicle" situation where someone forces a vehicle off the roadway without colliding. We believe coverage should exist in these situations as long as there is evidence to support the claim.

(6) This provision prevents double recovery. It should be viewed as a premium saving device as both coverages cover the same medical expenses.

0082 Sec. 2. K.S.A. 40-3107 is hereby amended to read as follows:
0083 40-3107. Every policy of motor vehicle liability insurance issued
0084 by an insurer to an owner residing in this state shall:

0085 (a) Designate by explicit description or by appropriate refer-
0086 ence of all vehicles with respect to which coverage is ~~thereby~~ to
0087 be granted;

0088 (b) insure the person named ~~therein~~ and any other person, as
0089 insured, using any such vehicle with the expressed or implied
0090 consent of such named insured, against loss from the liability
0091 imposed by law for damages arising out of the ownership, main-
0092 tenance or use of any such vehicle within the United States of
0093 America or the Dominion of Canada, subject to the limits stated
0094 in such policy;

0095 (c) state the name and address of the named insured, the
0096 coverage afforded by the policy, the premium charged ~~therefor~~
0097 and the policy period;

0098 (d) contain an agreement or be endorsed that insurance is
0099 provided ~~thereunder~~ in accordance with the coverage required
0100 by this act;

0101 (e) contain stated limits of liability, exclusive of interest and
0102 costs, with respect to each vehicle for which coverage is ~~thereby~~
0103 granted, not less than \$25,000 because of bodily injury to, or
0104 death of, one person in any one accident and, subject to the limit
0105 for one person, to a limit of not less than \$50,000 because of
0106 bodily injury to, or death of, two or more persons in any one
0107 accident, and to a limit of not less than \$10,000 because of harm
0108 to or destruction of property of others in any one accident;

0109 (f) include personal injury protection benefits to the named
0110 insured, relatives residing in the same household, persons
0111 operating the insured motor vehicle, passengers in such motor
0112 vehicle and other persons struck by such motor vehicle and
0113 suffering bodily injury while not an occupant of a motor vehicle,
0114 not exceeding the limits prescribed for each of such benefits, for
0115 loss sustained by any such person as a result of injury. The owner
0116 of a motorcycle, as defined by K.S.A. 8-1438 *and amendments*
0117 *thereto* or motor-driven cycle, defined by K.S.A. ~~1080 Supp.~~
0118 8-1439 *and amendments thereto*, who is the named insured,

0119 shall have the right to reject in writing insurance coverage
0120 including such benefits for injury to a person which occurs while
0121 the named insured is operating or is a passenger on such motor-
0122 cycle or motor-driven cycle; and unless the named insured
0123 requests such coverage in writing, such coverage need not be
0124 provided in or supplemental to a renewal policy when the
0125 named insured has rejected the coverage in connection with a
0126 policy previously issued by the same insurer. The fact that the
0127 insured has rejected such coverage shall not cause such motor-
0128 cycle or motor-driven cycle to be an uninsured motor vehicle;

0129 (g) notwithstanding any omitted or inconsistent language,
0130 any contract of insurance which an insurer represents as or
0131 which purports to be a motor vehicle liability insurance policy
0132 meeting the requirements of this act shall be construed to obli-
0133 gate the insurer to meet all the mandatory requirements and
0134 obligations of this act;

0135 (h) notwithstanding any other provision contained in this
0136 section, any insurer may exclude coverage required by subsec-
0137 tions (a), (b), (c) and (d) of this section while any insured vehicles
0138 are:

0139 (1) Rented to others or used to carry persons for a charge,
0140 however, such exclusion shall not apply to the use of a private
0141 passenger car on a share the expense basis;

0142 (2) being repaired, serviced or used by any person employed
0143 or engaged in any way in the automobile business. This does not
0144 apply to the named insured, spouse or relative residents; or the
0145 agents, employers, *employees* or partners of the named insured,
0146 spouse or resident relative; and

0147 (i) in addition to the provisions of subsection (h) and not-
0148 withstanding any other provision contained in subsections (a),
0149 (b), (c) and (d) of this section, any insurer may exclude coverage
0150 for: *

0151 (1) *For any bodily injury to any insured or any family*
0152 *member of an insured residing in the insured's household;*
0153 *person injured while operating the insured motor vehicle or for*
0154 *bodily injury to any person related to and residing in the same*
0155 *household with such operator;*

→ The word "employees" was left out originally. This is a correction only.

*
→ (1) The "household" exclusion is broadened by this amendment.
EXAMPLE: Father lets daughter have the family car for the evening. Daughter lets her boyfriend drive. While driving, the boyfriend has an accident, seriously injuring the daughter. Under present law, daughter's injuries would not be covered. With this amendment, the daughter would be covered as she is not related to or residing with the operator of the auto.

* See p. 8

0156 (2) for any damages for which the United States government
0157 might be liable for the insured's use of the vehicle;

0158 (3) for any damages to property owned by, rented to, or in
0159 charge of or transported by an insured, however, this exclusion
0160 shall not apply to coverage for a rented residence or rented
0161 private garage;

0162 (4) for any obligation of an insured, or the insured's insurer
0163 under any type of workers' compensation or disability or similar
0164 law;

0165 (5) for liability assumed by an insured under any contract or
0166 agreement; and

0167 (6) if two or more vehicle liability policies apply to the same
0168 accident, the total limits of liability under all such policies shall
0169 not exceed that of the policy with the highest limit of liability;

0170 (7) for any damages arising from an intentional act; and

0171 (8) for any damages to any person who is insured under a
0172 nuclear energy liability policy;

0173 (9) for any obligation of the insured to indemnify another for
0174 damages resulting from bodily injury to the insured's employee
0175 by accident arising out of and in the course of such employee's
0176 employment;

0177 (10) for bodily injury to any fellow employee of the insured
0178 arising out of and in the course of such employee's employment;

~~0179 (11) for bodily injury or property damage resulting from the
0180 handling of property:~~

~~0181 (A) Before it is moved from the place where it is accepted by
0182 the insured for movement into or onto the covered auto; or~~

~~0183 (B) after it is moved from the covered auto to the place where
0184 it is finally delivered by the insured;~~

~~0185 (12) for bodily injury or property damage resulting from the
0186 movement of property by a mechanical device, other than a hand
0187 truck, not attached to the covered auto; and~~

~~0188 (13) for bodily injury or property damage caused by the
0189 dumping, discharge or escape of irritants, pollutants or contami-
0190 nants; however, this exclusion does not apply if the discharge is
0191 sudden and accidental.~~

0192 Sec. 3. K.S.A. 40-3109 is hereby amended to read as follows:

(7) Permitted exclusion: Exclusion #7. This is the "intentional act" exclusion. Very simply, insurance should not pay the person who burns his car down or who intentionally causes an accident. If insurance paid these losses, the honest person would surely pay higher premiums.

(8) For the most part the "nuclear exclusion" will not affect the average Kansas auto policyholder. The "nuclear exclusion" applies only to persons who deal in the transportation of nuclear substances. In those cases coverage is excluded in favor of a nuclear energy liability policy such as one written by the Nuclear Energy Liability Insurance Association or the Mutual Atomic Energy Liability Underwriters.

(9) The "WC indemnification exclusion: is a companion to subsection (4). Both, operating together, make worker's compensation coverage the exclusive remedy for injured workers.

EXAMPLE: "A" the employer and driver was taking "B", the employee to a worksite. "A" failed to yield at an intersection and was struck by "C" who was speeding in his car. "A" paid WC benefits to "B". "B" sued "C" and collects his medical expenses and loss of earnings based on "C's negligence. "C" then sues "A". "A" has met his responsibility to "B". "C's suit against "A" should be dropped. In the event the lawsuit against "A" is not dropped, it will be "A's workers compensation policy which will defend "A". Employers liability coverage (Cov. B) of the WC policy is written for this purpose.

(10) The "fellow servant rule" holds that since the employer is required to provide workers compensation coverage, he is not further liable to the injured employee. This is the law in the State of Kansas. This exclusion simply makes the Kansas auto policy conform with present law.

0156 ~~(2) for any damages for which the United States government~~
 0157 ~~might be liable for the insured's use of the vehicle;~~
 0158 ~~(3) for any damages to property owned by, rented to, or in~~
 0159 ~~charge of or transported by an insured, however, this exclusion~~
 0160 ~~shall not apply to coverage for a rented residence or rented~~
 0161 ~~private garage;~~
 0162 ~~(4) for any obligation of an insured, or the insured's insurer~~
 0163 ~~under any type of workers' compensation or disability or similar~~
 0164 ~~law;~~
 0165 ~~(5) for liability assumed by an insured under any contract or~~
 0166 ~~agreement; and~~
 0167 ~~(6) if two or more vehicle liability policies apply to the same~~
 0168 ~~accident, the total limits of liability under all such policies shall~~
 0169 ~~not exceed that of the policy with the highest limit of liability;~~
 0170 ~~(7) for any damages arising from an intentional act; and~~
 0171 ~~(8) for any damages to any person who is insured under a~~
 0172 ~~nuclear energy liability policy;~~
 0173 ~~(9) for any obligation of the insured to indemnify another for~~
 0174 ~~damages resulting from bodily injury to the insured's employee~~
 0175 ~~by accident arising out of and in the course of such employee's~~
 0176 ~~employment;~~
 0177 ~~(10) for bodily injury to any fellow employee of the insured~~
 0178 ~~arising out of and in the course of such employee's employment;~~
 0179 (11) for bodily injury or property damage resulting from the
 0180 handling of property:
 0181 (A) Before it is moved from the place where it is accepted by
 0182 the insured for movement into or onto the covered auto; or
 0183 (B) after it is moved from the covered auto to the place where
 0184 it is finally delivered by the insured;
 0185 (12) for bodily injury or property damage resulting from the
 0186 movement of property by a mechanical device, other than a hand
 0187 truck, not attached to the covered auto; and
 0188 (13) for bodily injury or property damage caused by the
 0189 dumping, discharge or escape of irritants, pollutants or contami-
 0190 nants; however, this exclusion does not apply if the discharge is
 0191 sudden and accidental.
 0192 Sec. 3. K.S.A. 40-3109 is hereby amended to read as follows:

(11) This exclusion and #12 below are known as the "loading and unloading" exclusions. Their purpose is to coordinate coverage between a general liability policy and the automobile policy. One begins where the other ends to provide coverage as goods and materials go in and out of autos and trucks. These exclusions are used in all states. We attach a general liability endorsement to illustrate how these exclusions work together.

Without the "loading and unloading" exclusions in the policy, Kansas auto policyholders can be charged with general liability losses of Boeing or Safeway for example!

(12) This is the "forklift" exclusion which should be considered in the discussion of the "loading and unloading" exclusion above.

(13) This is the pollution exclusion. Here, as with exclusions above, there is a need to coordinate with the general liability policy:

EXAMPLE: Mr. Smith, a farmer, is carrying a tank of liquid fertilizer. He loses control of his pickup, hits a bridge abutment and the tank goes into a stream, causing considerable pollution damage. This damage is covered. All sudden and accidental damage is covered. By contract, continuous pollution is not covered. It is not covered under a general liability policy and it should not be covered under an auto policy. Coverage is written by the Pollution Liability Insurance Association as well as several individual insurance companies, specifically for the pollution exposure. To load the Kansas auto policy with this additional risk is not right! And has premium impact.

0193 40-3109. (a) A self-insurer or the insurer of the owner of a motor
 0194 vehicle covered by a policy of motor vehicle liability insurance
 0195 meeting the requirements of this act shall pay any personal
 0196 injury protection benefits which are required to be provided by
 0197 this act or in such owner's policy of motor vehicle liability
 0198 insurance for any injury:

0199 (1) Sustained in this state by the owner while occupying a
 0200 motor vehicle not excluded by subsection (a) of K.S.A. 40-3108,
 0201 or while not an occupant of a motor vehicle if the injury is caused
 0202 by physical contact with a motor vehicle;

0203 (2) sustained outside this state, but within the United States
 0204 of America, its territories or possessions or Canada, by the owner
 0205 while occupying the owner's motor vehicle; within the United
 0206 States of America, its territories or possessions or Canada by the
 0207 owner while:

0208 (A) Occupying a motor vehicle not excluded by subsection
 0209 (a) of K.S.A. 40-3108 and amendments thereto; or

0210 (B) not an occupant of a motor vehicle if the injury is caused
 0211 by physical contact with a motor vehicle;

0212 (3) (2) sustained by a relative of the owner residing in the
 0213 same household, under the circumstances described in para-
 0214 graph (1) or (2) of this subsection, if the relative at the time of the
 0215 accident is not himself the owner of a motor vehicle with respect
 0216 to which a motor vehicle liability insurance policy is required by
 0217 this act;

0218 (4) (3) sustained in this state by any other person while
 0219 occupying such motor vehicle or, if a resident of this state, while
 0220 not an occupant of such motor vehicle, if the injury is caused by
 0221 physical contact with such motor vehicle and the injured person
 0222 is not himself the owner of a motor vehicle with respect to which
 0223 a motor vehicle liability insurance policy is required under this
 0224 act.

0225 (b) If two (2) or more insurers or self-insurers are liable to pay
 0226 personal injury protection benefits for the same injury to any one
 0227 (1) person, the maximum benefits payable from all applicable
 0228 policies shall be the total of the various maximum benefits
 0229 provided by this act, and any insurer or self-insurer paying the

The added language broadens coverage to the insured who is injured outside the State of Kansas. Covered situations will be injury as a pedestrian or when the insured is occupying a non-owned car which has no PIP coverage.

0220 benefits shall be entitled to recover from each of the other
 0221 insurers or self-insurers an equitable pro rata share of the ben-
 0222 efits paid and expenses incurred in processing the claim. *highest*
 0223 *limit of any one policy providing such personal injury protec-*
 0224 *tion benefits. The primary personal injury protection coverage*
 0225 *shall be provided by the policy covering:*

0226 (1) *The motor vehicle occupied by the injured person at the*
 0227 *time of the accident; or*

0228 (2) *the motor vehicle causing such physical contact.*

0229 See. 4. K.S.A. 40-3117 is hereby amended to read as follows:

0240 40-3117. (a) In any action for tort brought against the owner,
 0241 operator or occupant of a motor vehicle or against any person
 0242 legally responsible for the acts or omissions of such owner,
 0243 operator or occupant, a plaintiff may recover damages in tort for
 0244 pain, suffering, mental anguish, inconvenience and other non-
 0245 pecuniary loss because of injury only in the event the injury
 0246 requires medical treatment of a kind described in this act as
 0247 medical benefits, having a reasonable value of five hundred
 0248 dollars (\$500) \$500 or more, or the injury consists in whole or in
 0249 part of permanent disfigurement, a fracture to a weightbearing
 0250 bone, a compound, comminuted, displaced or compressed frac-
 0251 ture, loss of a body member, permanent injury within reasonable
 0252 medical probability, permanent loss of a bodily function or
 0253 death. Any person who is entitled to receive free medical and
 0254 surgical benefits shall be deemed in compliance with the re-
 0255 quirements of this section upon a showing that the medical
 0256 treatment received has an equivalent value of at least five hun-
 0257 dred dollars (\$500) \$500. Any person receiving ordinary and
 0258 necessary services, normally performed by a nurse, from a rela-
 0259 tive or a member of his household shall be entitled to include the
 0260 reasonable value of such services in meeting the requirements of
 0261 this section. For the purpose of this section, the charges actually
 0262 made for medical treatment expenses shall not be conclusive as
 0263 to their reasonable value. Evidence that the reasonable value
 0264 thereof was an amount different than the amount actually
 0265 charged shall be admissible in all actions to which this subsec-
 0266 tion applies.

→ The new language simply cures an administrative headache. It takes nothing from the insured! It simply defines the insurance carrier who is to accept the responsibility for payment to the insured. This will permit benefits to begin immediately without disputes as to "which company will pay".

0267 (b) In any such action in tort for pecuniary or nonpecuniary
0268 loss because of injury, the amount of any settlement or judg-
0269 ment shall be reduced by any personal injury protection ben-
0270 efits, including any excess benefits above the minimum limit
0271 required by this act, paid or payable to the injured person as
0272 specified in subsection (q) of K.S.A. 40-3103 and amendments
0273 thereto.

0274 Sec. 5 4. K.S.A. 40-284, 40-3107, 40-3109, 40-3113a and 40-
0275 3117 and 40-3109 are hereby repealed.

0276 Sec. 6 5. This act shall take effect and be in force from and
0277 after its publication in the statute book.

*Comment from page 4 re the "household" exclusion.

The Western can support HB 2437 with or without the "household" exclusion.

The Committee should be most cognizant of the effect of this exclusion. At the present time Kansas law is out of balance in that a child can sue its parent but one spouse cannot sue the other for negligence. Sometime in the next year or two, either interspousal immunity will be removed or parental immunity will be restored. The two relationships should be and someday will be consistent.

It must be kept in mind that personal injury protection benefits (PIP "No Fault") are received by all injured occupants of the automobile as required by present statutory law.

The estimate has been made that without any immunity from negligence the bodily injury premium will increase 5 to 7%.

In the family unit, no matter how well intentioned, there is a reward to the wrongdoer when insurance is provided.