

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Rex Hoy at
Chairperson

3:30 ~~xxx~~/p.m. on February 9, 1984 in room 521 S of the Capitol.

All members were present except:

Rep. Littlejohn and Rep. Webb, who were excused.

Committee staff present:

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

Conferees appearing before the committee:

Dan Molden Randy Forbes
John Brookens Jerry and Mary Knight
Kathleen Sebelius Tom and Evelyn Badgers

Others Present:

See List (Attachment 1)

Dan Molden, Executive Director of the Kansas Association of Life Underwriters, explained a bill request their association would like to have introduced as a committee bill. He passed around Attachment 2, which is the wording he would like to have amended into K.S.A. 40-240b. Rep. L. Johnson moved to introduce this bill as requested. Rep. Peterson seconded. The motion carried.

Rep. Spaniol then moved for the introduction of a committee bill deleting Section K.S.A. 40-240b from the statutes. This would be discussed in the committee at the same time as the bill requested by Mr. Molden. Rep. Peterson seconded. The motion carried.

John Brookens, President of the Kansas Bar Association, then spoke in opposition to HB 2248 and HB 2833, the No-Fault bills under consideration by the committee. He passed around his testimony (Attachment 3) and referred to it in his oral testimony. He referred to the chart in this attachment comparing the present No-Fault law with the two bills considered today.

Kathleen Sebelius was next to testify in opposition to HB 2248 and HB 2833. She passed around Attachment 4, which sets out the opposition of the Kansas Trial Lawyers Association to these two bills. She spoke briefly then introduced Randy Forbes of Topeka, a member of KTLA. Mr. Forbes spoke in opposition to the two bills, and gave several examples of why he particularly thought the threshold should not be increased from the amount in the present law.

The committee then heard from Jerry and Mary Knight about their insurance situation after Mrs. Knight was involved in an automobile accident in September 1983. There were questions of Mr. and Mrs. Knight to give the committee more information. It was brought out that the Knights settled for about \$2,400, and their share was about \$1,000. Tom and Evelyn Badgers then spoke to the committee about an automobile accident they were involved in during January, 1983, and the problems they had in getting a settlement of their claims. Mr. and Mrs. Badgers also responded to questions from the committee, and said they finally settled in November for about \$12,000, and their part was about \$6,000. Both couples repaid their own insurance companies for doctor bills and personal injury protection benefits out of their settlements, as well as lawyers fees.

In response to a question, Mr. Brookens said the Kansas Bar Association was not opposed to the concept of No-Fault. They did recognize that inflation had occurred as far as the personal injury protection benefits were concerned but he did not think inflation had occurred 5 or 10 times on the threshold.

Rep. Peterson moved to approve the minutes of Feb. 6 and Feb. 7, 1984. Rep. Long seconded. The motion carried.

The meeting adjourned at 4:35 PM.

Proposed change.

Attachment 2

An Act relating to insurance concerning minimum educational requirements for agents:

Section 1. K.S.A. 40-240b is hereby amended to read as follows:
40-240b. All agents to whom this act applies must, within five years of initial licensing, furnish evidence satisfactory to the insurance commissioner that they have successfully completed one of the following;

* * * *

~~(c) any two research and review service of America, inc. correspondence courses on life insurance or, two pictorial publishers, inc., two pentera group, inc., or such similar and equivalent supervised study courses on life insurance as may be approved by the commissioner, or~~

(e) any two or more research and review service of America, inc., two or more pictorial publishers, inc., two or more pentra group, inc. supervised correspondence courses on life insurance determined by the commissioner to have an aggregate total of forty or more study hour credits, or such similar and equivalent supervised study courses on life insurance as may be approved by the commissioner, or

Atch. 2



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Attachment 3

February 9, 1984

Statement of The Kansas Bar Association

Re: HB 2248) Amending No-Fault (KSA 40-3103, etc.)
HB 2833)

Mr. Chairman and Members of the Committee on Insurance:

The Kansas Bar Association opposes both HB 2248 and 2833. We believe neither is in the public interest.

Massachusetts in 1971 became the first State to adopt a form of no-fault insurance. In 1972, 10 States enacted various forms of no-fault. Illinois adopted no-fault, but there was a legislative defect in the bill and it was declared unconstitutional. After reflection, the Illinois Legislature declined to re-enact no-fault.

In 1973, 1974, and 1975, 15 States passed various forms of no-fault insurance laws. A New Mexico no-fault law was vetoed by the Governor. The Nevada no-fault law was repealed January 1, 1980 after 6 years of unsatisfactory experience.

27 States do not have any form of no-fault. 23 States do have some form of no-fault insurance law.

No State has enacted a no-fault insurance law since 1975, although it has been proposed in most of those States.

States now having some form of no-fault insurance law are:

Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, and Virginia.

California (noted for its social legislation) does not have no-fault, and Colorado is the only State bordering Kansas that does have no-fault.

A no-fault insurance law was proposed in Missouri in 1983, but was not enacted.

Atch. 3

18 of the no-fault States require PIP and liability coverage. Four no-fault States do not require compulsory insurance. One no-fault State requires PIP coverage, but not liability insurance.

Eight of the no-fault States do not place any restriction on a person's right to assert a claim for non-pecuniary damage.

Only 15 States place a restriction on a person's right to assert a claim for non-pecuniary damage, such as pain and suffering. This is done either by what is called a "verbal" threshold or by a monetary threshold. A "verbal" threshold relates to wording in the statute such as fracture of a weight bearing bone, permanent disfigurement, permanent loss of a bodily function, and the like. A monetary threshold relates to the amount of medical expense incurred.

As of this writing, breakdown of the tort exemptions (thresholds) of the 23 no-fault States is:

8 States	No threshold, no restrictions on the right of a person to assert a claim.
3 States	Verbal only
1 State	Verbal/\$200
1 State	Verbal/\$400
5 States	Verbal/\$500 (includes Kansas)
1 State	Verbal/\$750
2 States	Verbal/\$1,000
1 State	Verbal/\$3,600
1 State	Verbal/\$4,000

At this point in our Statement, we insert a comparison of PIP benefits, and the tort exemptions (thresholds) provided by existing law, in HB 2248, and in HB 2833.

<u>PIP Benefits</u>	<u>Current law</u>	<u>HB 2248</u>	<u>HB 2833</u>
Disability (loss of earnings)	\$650/person/month/1 yr	\$1,200/person/month/1 yr	\$1,200/person/month/1 yr
Survivor's benefit	\$650/person/month/1 yr	\$1,200/person/month 1 yr	\$1,200/person/month/1 yr
Medical expense	\$2,000/person	\$4,900/person	\$5,000/person
Funeral expense	\$1,000/person	\$2,000/person	\$2,500/person
Rehabilitation expense	\$2,000/person	\$4,900/person	\$5,000/person
Substitute service expense	\$12/day/person/1 yr	\$22/day/person/1 yr	\$22/day/person/1 yr
Monetary tort threshold	\$500.00	\$2,500.00	\$5,000.00
Verbal tort threshold	permanent disfigurement; fracture of weightbearing bone; a compound, comminuted, displaced or compressed fracture; loss of a body member; permanent injury; permanent loss of a bodily function; death	same as present law.	permanent disfigurement; loss of a body member; permanent injury; permanent loss of a bodily function; death.

Re: H.B. 2248 and H.B. 2833.

Statement of Kansas Bar Association
February 9, 1984.

The Kansas Bar Association opposes both bills.

In 1983, the Insurance Department and the Insurance Industry both, in testimony before this Committee, supported HB 2248. The thrust of that testimony was that since inflation had occurred since enactment of no-fault in Kansas in 1973, an inflation factor should be used to increase both the PIP benefit package and the threshold. However, benefits were increased by a factor varying from 2.4 to less than 2. Yet, they wanted to raise the threshold by a factor of 5. They testified, in substance, that this was necessary to maintain a "balance".

Yet, the Insurance Commissioner in his report to the Legislature, dated January 21, 1981, stated: (on page 22)

"It would appear the premium rate for No-Fault has remained at the same level it would have been at if Kansas had retained the tort system. As such, the premium rate has remained constant while providing more benefits to more injured traffic victims. Therefore, the K.A.I.R.A. (no-fault) appears to be successfully meeting the goal of providing more benefits at no greater cost than the tort system."

In 1984, the Insurance Industry supports HB 2833, which is even more restrictive of consumer rights, and approaches the level of being punitive when it attempts to delete "fracture of weight bearing bone; a compound, comminuted, displaced or compressed fracture" from the verbal threshold and attempts to raise the monetary threshold to \$5,000.00.

The Insurance Industry suggests consumers have not appeared before this committee to protest the raise in the threshold. You will recall, Jack Euler, attorney of Troy, Kansas, brought an elderly farm couple with him before this committee last year. Rep. VanCrum brought an aggrieved mother to appear before this committee last year. We are not aware of anyone not connected with the Insurance Industry that believes the tort threshold should be increased.

The Insurance Industry suggests HB 2833 would save in premiums. Mr. Cowan, in his testimony Monday, stated 80 to 85% of the people now purchase enhanced PIP coverage. The minimum cost of this enhanced PIP coverage is illustrated by statistics contained in the following page. A consumer can purchase more PIP protection than HB 2833 provides for less than the cost of 3 or 4 packages of cigarettes, and still leave the tort threshold at \$500 under existing law.

Statement of Kansas Bar Association
February 9, 1984.

Re: HB 2248
HB 2833

Under the present law, with the \$500.00 THRESHOLD, a consumer can purchase additional PIP protection benefits at a very low cost. Representative samples are: (These are telephone quotes)

- State Farm Ins Co: will increase medical benefits to \$5,000.00 and increase disability benefits to \$1,500.00 a month for 3 years, for an additional premium of \$3.40.
- will increase medical benefits to \$25,000.00 and increase disability benefits to \$1,500.00 per month, for 3 years, at an additional premium cost of \$6.00.
- Farmers Ins Group: will increase medical benefits to \$5,000.00 for an additional premium of \$1.00; will increase medical benefits to \$10,000.00 for an additional premium of \$2.00; will increase disability benefits to \$1,000.00 for an additional premium of \$2.00.
- AID Ins Co: will increase medical benefits to \$25,000.00, and increase loss of earnings to \$1,000.00 per person per month for 2 years, and increase survivor's benefits to \$1,000.00 per person per month for 2 years, for an additional premium of \$5.00.
- Western Casualty: will increase medical benefits to \$25,000.00, and increase funeral benefits to \$2,000.00 per person, and increase loss of earnings to \$1,000.00 per month for 2 years, and increase survivor's benefits to \$1,000.00 per month for 2 years, for an additional premium of \$8.00.
- Kemper Ins Group: will increase medical benefits to \$25,000.00, funeral benefits to \$1,500.00, rehabilitation expense to \$25,000.00, loss of earnings to \$1,000.00 per month for 2 years, survivor's benefits to \$1,000.00 per month for 2 years, substitute service to \$12.00 per day for 2 years, for an additional premium of \$3.00.

The Insurance Industry complains about the cost of attorney fees in claim settlements. An injured person goes to an attorney for one of two reasons: 1) the Insurance Company has ignored the injured person, made no attempt to discuss realistic dollar settlement amounts; or 2) the injured person is of the opinion that the Insurance Company has offered a sum of money that is not sufficient to compensate adequately.

In listening to the Insurance Industry presentation on Monday, it seems to us they take the attitude they should sell the insurance policy, collect the premium, and then should a claim arise, they ALONE should determine the amount of compensation.

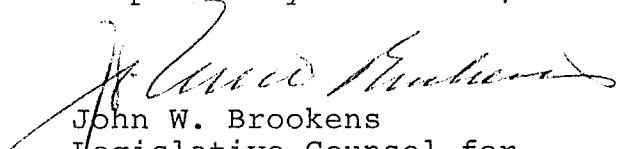
Juries are the ultimate consumer. Juries reflect the attitudes of the public at large. Lawyers and insurance people with few exceptions do not serve on personal injury case juries.

Juries believe in compensation for pain and suffering and bereavement. Lawyers know that fact. Insurance company people do not seem to accept that fact. And that very attitude is reflected in their claim settlement policies and is the cause of much of the lawyer cost reflected in the final pay-out of the premium dollar. Time permitting, we will in oral testimony give many specific examples of this attitude on the part of insurance companies.

We respectfully submit that the provision in each bill which gives approval for administrative juggling of PIP benefits and the threshold based on the Consumer Price Index is not proper legislation. This is a legislative matter. Any change should be considered by the Legislature, the representatives of the people.

This legislation will affect every motorist, every man, woman, and child in Kansas. We respectfully request that the Kansas Legislature not further restrict the right of people, of injured persons, to assert a claim to an impartial group of fellow citizens--to a jury--for determination.

Respectfully submitted,


John W. Brookens
Legislative Counsel for
The Kansas Bar Association

February 9, 1984

TO: House Insurance Committee.
FROM: Kansas Trial Lawyers Association.
RE: Opposition to H.B. 2248, 2883 on No-Fault Insurance.

Key Points on No-Fault Insurance.

- I. There is no data to justify raise in threshold that is requested, of either \$2,500 or \$5,000. Number of law suits filed in auto cases has decreased, and Insurance Commissioner's office reported in 1982 that No-Fault insurance was working in Kansas.
- II. Benefit package is too low, but most Kansas drivers have other options.
 - * Vast majority (80-85% of Western customers) currently purchase increased benefit package.
 - * Optional package is quite inexpensive - less than \$10.00 per year.
 - * Most drivers have other insurance policies which add to protection - health insurance, disability policies, income continuation plans.
- III. Threshold bars injured citizens from day in court. No data presented as to how many citizens would be barred, but according to review of caseloads numbers will be substantial.
- IV. Questionable public policy: Kansas Legislature has mandated that drivers purchase insurance policies with enactment of No-Fault. People expect that system to protect them. Now we are proposing to mandate a small group to purchase higher benefit limits in exchange for barring all citizens from access to courts.
- V. No citizen has ever appeared to urge Committee to raise benefits or raise threshold. Year after year, injured citizens have appeared to tell their story and demonstrate how change in law would have affected them.
- VI. No one is ever "forced" to contact an attorney or deal with the courts. It's logical that if an injured citizen feels that the insurance offer is fair and satisfactory, settlement will occur. Citizens contact lawyers when they feel unfairly treated.
- VII. National momentum has swung against No-Fault insurance. No state has passed a law since 1975. Pennsylvania just repealed their statute; New Jersey is in the process of repealing their statute. Many states have switched to mandatory liability coverage with add-on benefit package.

We urge the Committee to defeat H.B. 2248 and H.B. 2833 on No-Fault Insurance.