

MINUTES OF THE House COMMITTEE ON Insurance

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

3:30 a.m./p.m. on February 12, 1986 in room 521-S of the Capitol.

All members were present except:

Committee staff present:
Melinda Hanson, Research Department
Gordon Self, Revisor's Office
Deanna Willard, Committee Secretary

Conferees appearing before the committee:
Mr. Dick Brock, Kansas Insurance Department
Mr. Lee Wright, Farmers Insurance Group
Mr. Gerald Scott, Kansas Trial Lawyers Assoc.
Mr. Dick Scott, State Farm Insurance Co.

The meeting was called to order by the Chairman.

Hearing on: House Bill 2645 - An act concerning uninsured and underinsured motorist coverage.

Mr. Dick Brock, Insurance Department, was the first conferee on this bill. This bill grew out of an Interim study which had reviewed HB 2324, which also related to uninsured and underinsured motorist coverage. He explained the protection provided by uninsured motorist coverage and underinsured motorist coverage. He stressed that underinsured coverage will pay an insured only the amount in excess of the claimant's liability coverage. He said previous testimony has indicated that there is no charge for this basic coverage which motorists are required to have. The Interim Committee has recommended that no action be taken to repeal anti-stacking provisions in K.S.A. 1984 Sup. 40-284. He explained the procedure necessary to protect subrogation rights of an underinsured motorist coverage insurer: a written notice from its insured that a tentative agreement to settle for liability limits had been reached with an underinsured tortfeasor and payment to the insured in the amount of the tort settlement within 60 days of such notice. Amendments to this bill suggest that such written notice would need to be by certified mail and that the insurance company have 90 days to make payment. (Attachment 1.)

The next conferee was Mr. Lee Wright, Farmers Insurance Group. He stated that the certified mail requirement would provide the insurance companies with a record that tentative agreement had been reached. This procedure should end a current stalemate and allow the plaintiff to collect money due him.

Ms. Kelle Roesch, Intern with Kansas Trial Lawyers Association, introduced Mr. Gary Scott, a Wichita personal injury litigation attorney. Mr. Scott told the Committee that the written notice provides a mechanism whereby the insured can notify his insurer that the "other people want to pay their share; if you want to block me from settling, you advance me the money." The KTLA has no objection to the certified mail amendment, nor to the documentation of pecuniary losses, which would be done anyway. However, he

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 521-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 12, 1986.

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feels that 60 days is enough time for the insurance company to make its determination in the case. Mr. Scott also felt that the individual would be better served to have to reject uninsured motorist coverage for all new policies and by not allowing the named insured to reject coverage for all parties insured by the policy.

The last conferee was Mr. Dick Scott, State Farm Insurance Company. He used charts to explain to the Committee the present mechanism for settling an underinsured motorist claim and the simplified method provided by this bill. He stated that the insurance companies felt 90 days were needed to allow time to gather reports from doctors, employers, etc. before they advanced the money. They also feel that a policy should be rated for the people who are going to be affected and should apply to anyone who is going to be using the policy; hence the named insured should be able to make the determination to reject uninsured motorist coverage.

The Chairman asked if there were any conferees on HB 2532 - An act requiring insurers to offer reduced premiums for use of safety belts. There were none. No further hearing is scheduled at this time.

The minutes of the previous meeting were approved.

The meeting was adjourned at 5:00 p.m. by the Chairman.

HOUSE BILL No. 2645

By Special Committee on Financial Institutions and Insurance

Re Proposal No. 13

12-17

0017 AN ACT relating to insurance; concerning uninsured and un-
0018 derinsured motorist coverage; amending K.S.A. 1985 Supp.
0019 40-284 and repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1985 Supp. 40-284 is hereby amended to
0022 read as follows: 40-284. (a) No automobile liability insurance
0023 policy covering liability arising out of the ownership, mainte-
0024 nance, or use of any motor vehicle shall be delivered or issued
0025 for delivery in this state with respect to any motor vehicle
0026 registered or principally garaged in this state, unless the policy
0027 contains or has endorsed thereon, a provision with coverage
0028 limits equal to the limits of liability coverage for bodily injury or
0029 death in such automobile liability insurance policy sold to the
0030 named insured for payment of part or all sums which the insured
0031 or the insured's legal representative shall be legally entitled to
0032 recover as damages from the uninsured owner or operator of a
0033 motor vehicle because of bodily injury, sickness or disease,
0034 including death, resulting therefrom, sustained by the insured,
0035 caused by accident and arising out of ownership, maintenance or
0036 use of such motor vehicle, or providing for such payment irre-
0037 spective of legal liability of the insured or any other person or
0038 organization.

0039 (b) Any uninsured motorist coverage shall include an un-
0040 derinsured motorist provision which enables the insured or the
0041 insured's legal representative to recover from the insurer the
0042 amount of damages for bodily injury or death to which the
0043 insured is legally entitled from the owner or operator of another
0044 motor vehicle with coverage limits equal to the limits of liability

Amendments to HB 2645

Attachment 1
House Insurance 2/12/86

0015 provided by such uninsured motorist coverage to the extent such
0016 coverage exceeds the limits of the bodily injury coverage carried
0017 by the owner or operator of the other motor vehicle.

0048 (c) The insured named in the policy shall have the right to
0049 reject, in writing, the uninsured ~~motorist~~ coverage required by
0050 subsection (a) which is in excess of the limits for bodily injury or
0051 death set forth in K.S.A. 40-3107 and amendments thereto. Un-
0052 less the insured named in the policy requests such coverage in
0053 writing, such coverage need not be provided in ~~or supplemental~~
0054 ~~to a renewal policy~~ where the named insured had rejected the
0055 coverage in connection with a policy previously issued to the
0056 insured by the same insurer.

motorist

A rejection by the insured named in the policy of the uninsured motorist coverage shall be a rejection on behalf of all parties insured by the policy.

any subsequent policy issued by the same insurer for motor vehicles owned by the named insured, including, but not limited to, supplemental, renewal, reinstated, transferred or substitute policies

0057 (d) Coverage under the policy shall be limited to the extent
0058 that the total limits available cannot exceed the highest limits of
0059 any single applicable policy, regardless of the number of policies
0060 involved, persons covered, claims made, vehicles or premiums
0061 shown on the policy or premiums paid or vehicles involved in an
0062 accident.

0063 (e) Any insurer may provide for the exclusion or limitation of
0064 coverage:

0065 (1) When the insured is occupying or struck by an uninsured
0066 automobile or trailer owned or provided for the insured's regular
0067 use;

0068 (2) when the uninsured automobile is owned by a self-in-
0069 surer or any governmental entity;

0070 (3) when there is no evidence of physical contact with the
0071 uninsured motor vehicle and when there is no reliable compe-
0072 tent evidence to prove the facts of the accident from a disinter-
0073 ested witness not making claim under the policy;

0074 (4) to the extent that workers' compensation benefits apply;

0075 (5) when suit is filed against the uninsured motorist without
0076 notice to the insurance carrier; and

0077 (6) to the extent that personal injury protection benefits
0078 apply.

0079 (f) An underinsured motorist coverage insurer shall have
0080 subrogation rights ~~subject to the following circumstances~~

0081 ~~(1) [Written notice must be given the underinsured motorist~~

under the provisions of K.S.A. 40-287 and amendments thereto.

coverage insurer by its insured when a tentative agreement to settle for liability limits has been reached with an underinsured

If

0084 tortfeasor, and
0085 (72) within 60 days of receipt of this written notice, the
0086 underinsured motorist coverage insurer may substitute its pay-
0087 ment to the insured for the tentative settlement amount. The
0088 underinsured motorist coverage insurer is then subrogated to
0089 the insured's right of recovery to the extent of such payment and
0090 any settlement under the underinsured motorist coverage. If the
0091 underinsured motorist coverage insurer fails to pay the insured
0092 the amount of the tentative tort settlement within 60 days, the
0093 underinsured motorist coverage insurer has no right of subro-
0094 gation for any amount paid under the underinsured motorist
0095 coverage.

written notice must be given by certified mail to the underinsured motorist coverage insurer by its insured. Such written notice shall include written documentation of pecuniary losses incurred, including copies of all medical bills and written authorization or a court order to obtain reports from all employers and medical providers.

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0096 Sec. 2. K.S.A. 1985 Supp. 40-284 is hereby repealed.
0097 Sec. 3. This act shall take effect and be in force from and
0098 after its publication in the statute book.