Approved February 28, 1989
Date

MINUTES OF THE ~~House~~ COMMITTEE ON ~~Insurance~~.

The meeting was called to order by ~~Dale Sprague~~ Chairperson at

~~3:30~~ ~~XX~~ a.m./p.m. on ~~February 20,~~, 19~~89~~ in room ~~531-n~~ of the Capitol.

All members were present except:

Representative Michael Sawyer

Committee staff present:

Chris Courtwright, Research Department
Bill Edds, Revisor of Statutes
Patti Kruggel, Committee Secretary

Conferees appearing before the committee:

Others present: see attached list.

The Chairman called the meeting to order at 3:30 p.m.

A motion was made by Representative Cribbs, seconded by Representative Flower to approve the minutes of February 15, 1989 and February 16, 1989. The motion carried.

The Chairman explained that the Committee would accept bill requests at this time and that these would be the last requests to be considered for this 1989 Session.

Lee Wright, Farmers Insurance Group, requested the Committee to introduce a bill relating to DUI/Diversion records. The bill would allow insurers to obtain the drivers records of arrested drunk drivers who have gone on the diversion program. (Attachment 1)

Representative Turnbaugh made a motion to request the bills. Representative Bryant seconded. The motion carried.

Representative Arthur Douville appeared before the Committee requesting a bill which would provide for the designation of beneficiaries to receive wrongful death benefits under uninsured or underinsured motorist provisions of automobile liability insurance policies.

A motion was made to request the bill by Representative Turnbaugh, seconded by Representative Hoy. The motion carried.

Next was Jerry Slaughter, Kansas Medical Society, with two bill requests relating the the health care provider insurance availability act: (1) amending sections 1, 2, and 3 of K.S.A. 40-3411 (Attachment 2); and (2) relating to the selection of attorneys by Insurance Companies (Attachment 3).

Representative Cribbs made a motion to request the bills. Representative Lynch seconded. The motion carried.

Representative Rex Hoy requested that the Committee introduce two bill relating to title insurance: (1) concerning rate filings in connection with certain real estate transactions; and (2) prohibiting transactions.

A motion was made by Representative Hoy to request the bills. Representative Turnbaugh seconded. The motion carried.

MINUTES OF THE House COMMITTEE ON Insurance,

room 531-N Statehouse, at 3:30 a.m./p.m. xx on ____, 19~~89~~

Representative Hoy requested the Committee introduce two more bills: (1) relating to motor vehicle liability insurance; increasing the minimum coverage required for bodily injury, death and property damage; and (2) placing limitations on contingency fees based on medical malpractice.

There was a motion to request the bills by Representative Hoy, seconded by Representative Cribbs. The motion carried.

There were no other bill requests and the Committee began hearings on the Uninsured Motorists Bills.

Chris Courtwright, Legislative Research Department gave an overview of the bills to be heard.

HB 2268-- Relates to motor vehicle insurance; concerning suspension hearing; amending K.S.A. 1988 Supp. 40-3118 and repealing the existing sections. The bill provides the director of motor vehicles authority to extend beyond the 30 day time for requesting a hearing upon showing of good cause.

HB 2269 -- Concerns the reinstatement of drivers' licenses or motor vehicle registrations; amending K.S.A. Supp. 40-3104 and repealing the existing section; also repealing K.S.A. Supp. 40-3104, as amended by section 116 of chapter 356 of the 1988 Session Laws of Kansas.

HB 2313-- Relates to motor vehicle liability insurance; concerning proof of financial security; authorizing law enforcement officers to remove the license plates of certain motor vehicles upon failure to provide such proof; providing a procedure for reclaiming such plates; amending K.S.A. 1988 Supp. 40-3118 and repealing the existing sections. This bill requires proof of financial security to mean the policy of motor vehicle liability insurance, an identification card or certificate of insurance or a certificate of self-insured.

HB 2324 -- Concerns penalties for failure to maintain financial security; amending K.S.A. Supp. 40-3104 and repealing the existing section; also repealing K.S.A. 1987 Supp. 40-3104 as amended by section 116 of chapter 356 of the laws of 1988. This bill applies to changes in the current law and would provide for the minimum fine of $100 to be raised to a minimum of $200.

HB 2325 -- Requires evidence of financial security to be provided at time of making application of financial security to be provided at time of making application for registration of motor vehicles; amending K.S. A. 1988 Supp. 40-3118 and repealing the existing sections. This bill while similar to HB 2313 would require proof of financial security to mean the a statement certified by the owner's insurance agent on a form prescribed by the director of vehicles.

Mr. Courtwright presented to the Committee Proposal No. 45, which directed the Special Committee on Judiciary to explore statutory and nonstarter measures designed to clarify and expedite current administrative procedures of the automobile liability insurance law. (Attachment 4) The proposal grew out of a report by the Ad Hoc Committee on Compulsory Automobile Liability Insurance.

MINUTES OF THE House COMMITTEE ON Insurance,

room 531-N Statehouse, at 3:30 a.m./p.m. on XX, 19 89

Representative David Heinemann testified in support of HB 2268 and HB 2269. Rep. Heinemann stated that he was the sponsor of these bills. HB 2268 addresses clients who have missed a hearing deadline and attempts to set up a provision for a suspension by the showing of good cause. HB 2269 would provide for a suspension if the person is a party to an action to determine liability.

Representative Hank Turnbaugh testified in support of HB 2324 and HB 2325 and explained that he was the sponsor of these bill. HB 2324 requires stiffer fines for those persons operating a vehicle without insurance coverage. HB 2325 requires a person to show proof of financial security when applying for registration of a motor vehicle.

Representative Ken Grotewiel testified in support of HB 2313 and explained that his purpose for sponsoring the bill was the need to tighten requirements for those who falsify applications for registrations of motor vehicles.

Lee Wright, Farmers Insurance Group, briefed the Committee on their views on compulsory auto liability insurance in general and provided written testimony (Attachment 5) for the Committee to keep in mind as the consider these bills.

Next appearing was John Smith, Kansas Department of Revenue, testified that the Department had no objections to HB 2324 or HB 2269. Mr. Smith stated opposition to HB's 2268, 2325, and 2313 and provided testimony (Attachments 6, 7, 8, and 9.)

Representing the Independent Insurance Agents of Kansas was Larry Magill, Vice President. Mr. Magill testified in opposition to HB 2313 and 2325 explaining that these bills would place a tremendous additional administrative burden on insurance agents and consumers is trying to force a relatively small percentage of drivers to carry insurance. He also claimed that it would not be effective because insurers could still cancel the coverage as soon as the certificate was issued. (Attachment 10.)

There were no others wishing to testify and the hearings were concluded.

The meeting was adjourned at 5:20 p.m.

GUEST LIST

COMMITTEE: _____ DATE: 2/20/89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Dick Brock	Topeka	Ins Dept
Jim Oliver	Topeka	DIA of KS
Laurie Hartman	"	KS Bar Assn.
Lee Wright	Overland Park	Farmers Ins. Group
R.G. Frey	Topeka	KTLA
John W. Smith	Topeka	K.D.O.R.
Jim Koller	Topeka	KDOR
Lt. Bill Jacobs	Topeka	KHP
Neal Watts	124 W. Poplar Olathe	Close Up Topeka
David Hanson	Topeka	KS Assn Property Cas. Ins.
David Landers	Olathe	Close Up KS
MARK KORSTEN	OLATHE	Close up Kansas

THE Farmers Insurance Group of Companies

DATE: February 20, 1989

TO: Dale Sprague
House Insurance Committee Chairman

FROM: Lee E. Wright

SUBJECT: Request for Committee Bill

We are requesting the Committee introduce a bill relating to DUI/Diversion records.

The intent of this bill would be to allow insurers to obtain the driving records of arrested drunk drivers who have gone on the diversion program. Present law provides that entering into a diversion agreement does not constitute a conviction and therefore is not subject to the Open Records Act. We feel this information should be available for underwriting purposes.

When insurance companies are prohibited from using this data, it levels out the premiums for all drivers, with responsible drivers paying more than their fair share to support the unrecognized bad drivers.

This is virtually the same bill which passed both the Insurance Committee and the House in 1986 by an overwhelming margin, only to be narrowly defeated on the Senate floor by one vote.

Lee E. Wright
Kansas Legislative Representative

26-0680 9-87 13501 7T

AN ACT CONCERNING RENEWAL AND CANCELLATION OF INSURANCE POLICIES; RELATING TO DIVERSION AGREEMENTS; AMENDING K.S.A. 1986 40-277 AND 74-2012 AND REPEALING THE EXISTING SECTIONS.

BE IT ENACTED by the Legislature of the State of Kansas:

Section 1. K.S.A. 1986 40-277 is hereby amended to read as follows: 40-277. No insurance company shall issue a policy of automobile liability insurance in this state unless the cancellation condition of the policy or endorsement thereon includes the following limitations pertaining to cancellation by the insurance company:

After this policy has been in effect for 60 days, or if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel the insurance, afforded under (here insert the appropriate coverage references) solely because of age or unless

1. The named insured fails to discharge when due any obligations in connection with the payment of premium for this policy or any installment thereof whether payable directly or under any premium finance plan; or

2. the insurance was obtained through fraudulent misrepresentation; or

3. the insured violates any of the terms and conditions of the policy; or

4. the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,

(a) has had such person's driver's license suspended or revoked during the policy period, or

(b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to such person's ability to operate a motor vehicle, or

(c) is or has been convicted during the 36 months immediately preceding the effective date of the policy or during the policy period, for:

(1) any felony arising out of the operation of a motor vehicle, or

(2) criminal negligence, resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or

(3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs. Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of the offense described in this subsection (c)(3) shall constitute a conviction for the purposes of this section, or

(4) leaving the scene of an accident without stopping to report, or

(5) theft of a motor vehicle, or

(6) making false statements in an application for a driver's license, or

(7) a third moving violation, committed within a period of 18 months, of (i) any regulation limiting the speed of motor

vehicles, (ii) any of the provisions in the motor vehicle laws of any state, the violation of which constitutes a misdemeanor or traffic infraction, or (iii) any ordinance traffic infraction, or ordinance which prohibits the same acts as a misdemeanor statute of the uniform act regulating traffic on highways, whether or not the violations were repetitious of the same offense or were different offenses.

Sec. 2. K.S.A. 1986 74-2012 is hereby amended to read as follows: 74-2012. (a) All records of the division of vehicles relating to the physical or mental condition of any person, or to expungement, shall be confidential.

All other records of the division of vehicles shall be subject to the provisions of the open records act except as otherwise provided by this section.

(b) Lists of persons' names and addresses contained in or derived from records of the division of vehicles shall not be sold, given or received for the purposes prohibited by K.S.A. 1986 21-3914 and amendments thereto except that:

(1) The director of vehicles may provide to a requesting party, and a requesting party may receive, such a list and accompanying information from public records of the division upon written certification that the requesting party shall use the list solely for the purpose of (A) assisting manufacturers of motor vehicles in compiling statistical reports or in notifying owners of vehicles believed to (i) have safety-related defects (ii) fail to comply with emission standards or (iii)

have any defect to be remedied at the expense of the manufacturer; or (B) assisting an insurer authorized to do business in state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(2) Any law enforcement agency of this state which has access to public records of the division may furnish to a requesting party, and a requesting party may receive, such a list and accompanying information from such records upon written certification that the requesting party shall use the list solely for the purpose of assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(c) If a law enforcement agency of this state furnishes information to a requesting party pursuant to subsection (b)(2), the law enforcement agency shall charge the fee prescribed by the secretary of revenue and approved by the director of accounts and reports pursuant to subsection (c)(5) of K.S.A. 1986 45-219 and amendments thereto shall be paid monthly to the secretary of revenue.

(d) The secretary of revenue, the secretary's agents or employees, the director of vehicles or the director's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission of a law enforcement

agency in furnishing any information obtained from records of the division of vehicles.

(e) A fee in an amount fixed by the secretary of revenue and approved by the director of accounts and reports pursuant to subsection (C)(5) of K.S.A. 1986 45-219 and amendments thereto, for each request for information in the public records of the division concerning any vehicle or licensed driver shall be charged by the division, except that the director may charge a lesser fee pursuant to a contract between the secretary of revenue and any person to whom the director is authorized to furnish information under subsection (b), and such fee shall not be less than the cost of production or reproduction of any information requested.

(f) The secretary of revenue may adopt such rules and regulations as are necessary to implement the provisions of this section.

Sec. 3. K.S.A. 1986 40-277 and 74-2012 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Respectfully submitted this _____ day of February, 1989.

_____ BILL _____

AN ACT relating to the health care provider insurance availability act; amending K.S.A. 40-3411.

BE IT ENACTED by the Legislature of the State of Kansas:

Section 1. K.S.A. 40-3411 is amended to read as follows:

40-3411. Commencement of actions upon failure to reach settlement or obtain court approval thereof on amount to be paid from fund; defense of action; attorneys' fees; costs. (a) In any claim in which the insurer of a health care provider or inactive health care provider covered by the fund has agreed to settle its liability on a claim against its insured or when the self-insurer has agreed to settle liability on a claim and the claimant's demand is in an amount in excess of such settlement, to which the commissioner does not agree, or where the claim is against an inactive health care provider covered by the fund who does not have liability insurance in effect which is applicable to the claim and the claimant and commissioner cannot agree upon a settlement, an action must be commenced by the claimant against the health care provider or inactive health care provider in a court of appropriate jurisdiction for such damages as are reasonable in the premises. If an action is already pending against the health care provider or inactive health care provider, the pending action shall be conducted in all respects as if the insurer or self-insurer had not agreed to settle.

(b) Any such action against a health care provider covered by the fund or inactive health care provider covered by the fund who has liability insurance in effect which is applicable to the claim shall be defended by the insurer or self-insurer in all respects as if the insurer or self-insurer had not agreed to settle its liability. The insurer or self-insurer shall be reimbursed from the fund for the costs of such defense incurred after the settlement agreement was reached, including a reasonable attorney's fee. The commissioner is authorized to employ independent counsel in any such action against a health care provider or an inactive health care provider covered by the fund.

(c) In any such action the health care provider or the inactive health care provider against whom claim is made shall be obligated to attend hearings and trials, as necessary, and to give evidence.

(d) The costs of the action shall be assessed against the fund if the recovery is in excess of the amount offered by the commissioner to settle the case and against the claimant if the recovery is less than such amount.

History: L. 1976, ch. 231, § 11; L. 1983, ch. 160, § 3; April 21.

The Fund shall have no obligation to make any payment if the health care provider, without good and valid justification, fails to attend depositions, hearings and trials as necessary to give evidence and otherwise cooperate in the defense of the claim.

Section 2. K.S.A. 40-3411 is hereby repealed.

Section 3. The provisions of this Act shall take effect and be in force from and after publication in the statute book.

_____ BILL NO. ____

AN ACT relating to the health care provider insurance availability act; relating to the selection of attorneys by insurance companies.

BE IT ENACTED by the Legislature of the State of Kansas:

New Section 1. (a) In any action in which the commissioner has been served with a copy of the petition and which is being defended by the insurance carrier of the health care provider, the commissioner may object to the attorneys selected by the insurance carrier at any time within sixty (60) days after being informed of such attorneys' selection. If an objection is made, the insurer shall discharge the attorney and hire another attorney. The fund shall be responsible for the payment of one-half of the fees and expenses charged by any subsequent attorney whose retention has been agreed to by the commissioner. If the insurance carrier fails to obtain counsel satisfactory to the commissioner, after objection by the commissioner, neither the insured health care provider nor the fund shall be liable for any judgment, expense or cost, but rather such sums shall be paid by the insurance carrier.

(b) This Act shall be a part of and supplemental to the health care provider insurance availability act.

(c) The provisions of this section shall expire on July 1, 1991.

Section 2. This Act shall take effect and be in force from and after its publication in the statute book.

RE: PROPOSAL NO. 45 -- COMPULSORY AUTOMOBILE LIABILITY INSURANCE*

Proposal No. 45 directs the Special Committee on Judiciary to explore statutory and nonstatutory measures designed to clarify and expedite current administrative procedures of the automobile liability insurance law.

The proposal grew out of a report by the Ad Hoc Committee on Compulsory Automobile Liability Insurance, which held several meetings over the summer to study problems in the enforcement and administration of Kansas' compulsory law. The ad hoc committee, composed of representatives from all groups comprising the current administrative system, was formed at the recommendation of Representative Dale Sprague, Chairman of the House Committee on Insurance, in response to complaints about the effectiveness of the administrative system and to 1987 H.B. 2193, which would have required insurance cards presented for proof of financial security to contain the expiration date of the policy.

Background

Kansas is one of 14 states that mandates liability insurance and also limits lawsuits, operating under a so-called "modified" no-fault plan. All 14 have some type of verbal tort threshold, or description of certain injuries serious enough that the victim retains the right to sue. Eleven of the 14 jurisdictions also have a monetary tort threshold, or amount of incurred medical expenses beyond which a victim also retains the right to bring a cause of action in tort.

K.S.A. 40-3104 requires owners of motor vehicles to provide liability insurance and operators to provide law enforcement officers with proof of insurance or other financial security upon demand. Persons with more than 25 vehicles registered in Kansas may qualify as

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* H.B. 2633 accompanies this report.

self-insurers and obtain a certificate from the Insurance Commissioner that satisfies the financial security requirement.

Evidence of financial security also may be demonstrated by a liability insurance policy, an identification card or certificate of insurance providing the name of the insurer and a policy number, or the completion of an insurance verification form prescribed by the Secretary of Revenue ("DC-66") signed by the insurer or an agent of the insurer certifying that coverage was in effect on the date in question.

Motor carriers regulated by the State Corporation Commission are exempted from the provisions of K.S.A. 40-3104, as are motor vehicles owned by the federal government, any state or any political subdivision of any state; an implement of husbandry or special mobile equipment operated only incidentally on highways or property open to the public; vehicles operated on a highway only for the purpose of crossing such highway; and nonhighway vehicles for which nonhighway certificates of title have been issued. In addition, dealers of new and used vehicles are exempted from the requirement that persons operating a motor vehicle display proof of financial security upon demand when such vehicle is being offered for sale. 1987 H.B. 2147 exempted owners from the mandatory insurance requirement when the vehicles are included under qualifying self-insurance plans approved by state agencies. H.B. 2403 exempted owners of vehicles used in approved driver training courses when such insurance is provided by the school district or accredited nonpublic school.

H.B. 2193 would have required insurance cards presented for proof of financial security to contain the expiration date of the policy in addition to the policy number and other required information. The bill was reported adversely by the House Committee on Insurance.

Administrative Procedures and Enforcement

K.S.A. 40-3118 requires owners, at the time of registration, to certify that they have financial security. Such security also must be certified by owners when vehicle registrations are renewed. The Director of Vehicles, Department of Revenue, is required to verify a sufficient number of certifications each year to insure compliance with the provisions of the statute.

K.S.A. 1986 Supp. 8-1604 similarly requires drivers involved in accidents to prove financial security. Persons failing to prove financial security after an accident (or upon demand as provided in K.S.A. 40-3104) may avoid conviction by producing evidence that financial security was in effect on the date in question within 20 days after the arrest. Failure of the owner or the owner's company to furnish records to prove continuous financial security is deemed to be prima facie evidence that no such financial security exists.

When the Director receives prima facie evidence of the lack of continuous financial security, the Director is to notify the owner that after 30 days the owner's registration and driving privileges are to be suspended. The owner thus has 30 days to prove financial security or to request a hearing. If such proof is not produced and a hearing is not requested, the Director must suspend the owner's registration and driving privileges. Such suspension is to remain in effect until both a $25 reinstatement fee is paid and the owner obtains insurance. A second suspension within a year requires a $75 reinstatement fee. Owners may request a hearing and suspension may be avoided if the failure to maintain financial security is shown to be due to a cause beyond the reasonable control of the owner.

In summary, the administrative enforcement involves checking insurance certifications and determining proof of financial security following accidents. Administrative penalties include suspension of registration and driving privileges, and the payment of a reinstatement fee.

Criminal Procedures and Penalties

K.S.A. 40-3104 and 40-3118 also impose strict criminal penalties for failure to maintain financial security. Under K.S.A. 40-3104, persons who fail to have financial security are deemed guilty of a class B misdemeanor, which carries a penalty of up to six months in jail or up to a $1,000 fine. Those convicted of a second violation within three years of a prior conviction are guilty of a class A misdemeanor, which carries a sentence of up to one year in jail or up to a $2,500 fine. Similarly, under K.S.A. 40-3118, persons who make a false certification of insurance are guilty of a class B misdemeanor.

Recent Legislative History

Prior to January 1, 1983, insurance companies were required to notify the Director every time an owner's insurance policy was cancelled. One complaint about this method of enforcement was that persons who never had a policy could escape detection, absent involvement in an accident.

With the enactment of 1982 H.B. 2640, the notice of termination requirement was repealed, and the Director was required to randomly select and verify insurance certifications made by owners. The bill also required the suspension of registration and driving privileges of owners failing to maintain continuous financial security and established the reinstatement fees.

As well as enacting the requirements that proof of financial security be shown after accidents or upon demand of a law enforcement officer, 1984 H.B. 2614 removed the requirement that the Director randomly select insurance certifications for verification, and required instead that insurance companies, for three years after an insured is convicted of certain vehicular crimes (including driving without financial security), notify the Director of any policy termination for that driver.

S.B. 293, enacted in 1985, stipulated that certificates of self-insurance can cover leased vehicles as well as owned vehicles, provided the lease agreement requires that insurance be provided by the lessee.

The exemption for new vehicle dealers from the "on demand" provisions of K.S.A. 40-3104 was extended to used vehicle dealers as well, with the passage of 1986 S.B. 674.

Committee Activity

Staff presented the report and recommendations from the ad hoc committee which are designed to clarify the procedures that should be followed under K.S.A. 40-3104 and reduce confusion over the law. Included in the report was information from the Division of Vehicles

that many law enforcement officers and other personnel had not been sending the DC-66 forms to the Division for verification after proof of insurance had been requested.

Another problem was, while the Division had been initiating administrative procedures and penalties after proof of insurance had been denied by insurance companies, such denials were not brought to the attention of local prosecutors so criminal proceedings could be initiated. This lack of communication had not only led to avoidance of criminal prosecution under the statute, but also to other problems created when licenses had been suspended by the Division (due in some cases to errors in transmission between the Division and insurance companies), and the drivers were unaware that the evidence of financial security they demonstrated did not necessarily clear them from the administrative procedures and penalties initiated after such evidence of financial security had been denied.

The ad hoc committee also recommended legislation similar to 1985 H.B. 2490 that would allow insurance companies to cancel liability coverage for persons who enter into diversionary agreements after being charged with driving under the influence of alcohol or drugs.

Conclusions and Recommendations

The Committee requested that most of the statutory recommendations of the ad hoc committee be drafted for further consideration, including suggestions to require the Division to return DC-66 forms denied by insurance companies to prosecuting attorneys; to require that insurance cards contain the effective and expiration dates of the policy; to allow persons unable to demonstrate evidence of financial security to provide such evidence only in court; and to create a minimum $100 fine for violation of the statute.

Another recommendation would require the Division to return DC-66 forms denied by insurance companies to the law enforcement officers when statutorily acceptable evidence of financial security had been initially demonstrated by drivers. The officers would be required to issue citations when drivers were unable to demonstrate such evidence upon demand. The completion of the DC-66 form by the owner's

insurance company or agent would no longer be considered acceptable evidence of financial security. All of the above recommendations are contained in H.B. 2633, which accompanies this report.

The Special Committee on Judiciary considered the recommendation of the ad hoc committee regarding H.B. 2490 that would allow diversion to be a conviction for insurance purposes, but rejects this recommendation.

The Special Committee on Judiciary notes that most of the recommendations of the ad hoc committee are designed to fine tune the present administrative system and that compliance rates indicate that Kansas' compulsory law is functioning better than similar laws in other states.

Respectfully submitted,

November 30, 1987

Rep. Robert Wunsch, Chairperson
Special Committee on Judiciary

Sen. Robert Frey, Vice-Chairperson
Sen. Richard Bond
Sen. Jeanne Hoferer
Sen. Audrey Langworthy
Sen. William Mulich
Sen. Nancy Parrish

Rep. Joan Adam
Rep. Edwin Bideau
Rep. Arthur Douville
Rep. Connie Ames Kennard
Rep. Michael O'Neal
Rep. William R. Roy
Rep. Vincent Snowbarger
Rep. John Solbach
Rep. Dale Sprague

Compulsory Auto Liability Insurance

(Uninsured Motorist Bills)

House Insurance Committee

Testimony by Lee Wright

Legislative Representative for Farmers Insurance Group

Mr. Chairman, members of the Committee, my name is Lee Wright and I am representing Farmers Insurance Group of Companies. We appreciate this opportunity to speak this afternoon.

At this time, we are neither opposing nor supporting any of the bills scheduled here today. We simply would like to briefly share with the Committee our views on compulsory auto liability insurance in general and provide three thoughts for the Committee to keep in mind as they consider each of these bills on their own merits.

First of all, we know of no perfect system to assure that all drivers and all cars will be insured all of the time. There will always be a percentage of drivers out there determined and able to circumvent the system, no matter what laws are passed.

Secondly, the vast majority of motorists maintain auto liability insurance, not only because it is law, but because it is in their self interest to do so. During the Insurance Commissioner's Ad Hoc Committee study of the Kansas compulsory liability law in 1987, the Motor Vehicle Department estimated the percentage of insured drivers at about 93%.

Finally, any plan which places additional requirements on motorists to prove they are in compliance with the compulsory law should be carefully weighed against the increased burden and inconvenience which would be forced upon them as a result of passing such measures. Administrative costs for state bureaucracies and insurance companies to administer such plans must also be considered.

Thank you Mr. Chairman, that concludes my remarks.

KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B. Docking State Office Building
Topeka, Kansas 66612-1588

MEMORANDUM

TO: The Honorable Dale Sprague, Chairman
House Committee on Taxation

FROM: Kansas Department of Revenue

RE: H.B. 2268

DATE: February 20, 1989

K.S.A. 40-3118 presently affords a vehicle owner the opportunity to request an administrative hearing within 30 days. The only question to be decided at the hearing is whether or not continuous coverage has been maintained on the vehicle in question or if the lapse was beyond the reasonable control of the owner. Failure to receive the division's order is not an issue.

The Kansas Supreme Court has held in State v. Jones and State v. Moffett that failure to receive a properly mailed suspension order from the division is not a defense to a driving while suspended traffic citation.

It has always been the division's policy (although not required to do so by statute) to expunge any suspension whenever a vehicle owner subsequently demonstrates that the vehicle in question was insured as required. These matters are dealt with administratively and do not require a hearing.

Since a vehicle owner either has or has not maintained the required insurance - and that is the basic question at an administrative hearing - we urge the committee to reject this proposal.

Thank you for the opportunity to appear and comment on the provisions of H.B. 2268. The Division of Vehicles, Department of Revenue opposes the bill.

KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B. Docking State Office Building
Topeka, Kansas 66612-1588

MEMORANDUM

TO: The Honorable Dale Sprague, Chairman
House Committee on Taxation

FROM: Kansas Department of Revenue

RE: H.B. 2325

DATE: February 20, 1989

This bill places an unnecessary administrative burden and expense on the Division of Vehicles, insurance companies and the majority of insured vehicle owners. A large number of vehicle owners are insured through such companies as Colonial Penn, AARP, USAA and other companies that do not have local agents.

In addition, insurance companies already are required to issue their insureds an insurance identification card to meet the requirements of K.S.A. 8-1604 and K.S.A. 40-3104.

The Division recommends that the present insurance identification card or an insurance policy binder, issued not more than 45 days prior to the date a vehicle is registered, be produced to the county treasurer at the time of registration and this information (full company name and policy number) be recorded as part of the registration information that is sent to the division.

Thank you for the opportunity to appear and comment on the amendment proposed in H.B. 2325.

NEW YORK - COMPULSORY/NO-FAULT INSURANCE

Compulsory insurance was enacted in New York in 1958 and lasted until 1974 at which time it was replaced by no-fault insurance which is in existence today. During this period the following steps were taken:

1. In the initial compulsory phase, the certificates of insurance and notices of cancellation were sent to the Motor Vehicle Department. In this period New York was under a paper blitz and it didn't take too long for DMV to become inundated with paper, thus incurring millions of dollars in cost to DMV and also to the insurance industry. During this initial phase, the amount of paper precluded the Department from carrying on an effective program.

2. The law was amended in 1968 and gave the commissioner the discretion to substitute ID cards with a self-certification system. Under this phase:

   a. the insured filed an ID card with DMV at the time of registration;

   b. a copy of the card has to be carried in the vehicle and shown to any officer on demand;

   c. DMV selected a small percentage of the ID cards which they received and submitted these to the insurance companies for a negative verification process. In addition, DMV also used a specific verification program for traffic conviction, as well as other public request cases.

3. During 1981 the legislators had heard stories about large percentages of uninsured motorists driving New York's highways and decided that it was time to take a closer look at the compulsory aspects of the no-fault law. Hearings were held and, as usual, many people testified with various ideas; unfortunately, none of them had any valid statistics to present. One individual, representing a ratemaking authority for the insurance industry, testified that "he believed there was an uninsured population of at least 20 percent in the state." When questioned by the legislators, he stated: "He didn't have any figures to support his contention, however, this was a 'gut' feeling". This type of testimony was made in spite of a motor vehicle study showing that the state had a 90 to 92 percent insured population. This study was based on the negative and specific verification programs and would, in any normal circumstances, be termed as an accurate study. In this instance, the legislators ignored the study conducted by their own Motor Vehicle Department.

In discussions with the legislators, it was their firm belief that, while the programs which they favored did not work in the past, with the computer age it would only be necessary to punch a few buttons and you would have instant success. In essence, they favored a program where they would have all of the insurance companies report every bit of information in their files such as add-on cases, renewals, all cancellations, etc. This reporting was to be on an item basis. In essence, they visualized that we, as an industry, would tell DMV everything about all drivers, thereby giving DMV the cradle to the grave technique. A law favoring the above approach was passed in 1981 which would be effective September 1, 1982. This law was heavily backed by the Insurance Department and came forth despite the Motor Vehicle's opposition and testimony pointing out that, in their opinion, the law would not be effective. Industry

representatives met with representatives from the Motor Vehicle Department and attempted to work out a solution which could be accepted by both parties. During this period of time, it was pointed out by the industry that there were certain facets of the law which just couldn't work due to basic differences between the industry and DMV. Final regulations were issued in May of 1982 to the carriers, thus giving us a minimum lead time of three months to put forth a system which under normal circumstances would take a minimum of a year to implement.

4. The regulations and the law gave the industry:

   a. thirty days to report the adds, which is virtually impossible for many agency companies due to internal mechanisms.

   b. thirty days to report cancellations on an item basis. A penalty in the law provides that, while the cancellation to the insured would stand, the industry would incur third party liability if the cancellation notice was not received by DMV within that thirty day time frame.

   c. reports were to be submitted on an item, not on a policy, basis. This caused many additional reports which were not needed and not necessary for any program to work.

   d. if a lapse in coverage of one day occurred, this meant an automatic suspension to the insured. As the industry pointed out to DMV, this was not only a possibility but would occur due to our own establishment of the effective date of coverage. In this process, which is normal in the industry, the insured does not have a lapse but is rather insured through his previous carrier or the new carrier.

5. On November 12, 1982 the Motor Vehicle Department faced what is now known as their darkest day. This was the day that 18,000+ suspension notices were sent out to New York taxpayers. It turned out to be the darkest day since the majority of these notices were in error due to misinterpretations between the Motor Vehicle Department and the industry. With thousands of phone calls going in to DMV and the insurance companies, it naturally was picked up by TV, newspapers and radio which further added to the confusion. Both facets caught an awful lot of flack and it was decided by the Motor Vehicle Department that no further suspensions would be made until the system could be cleaned up.

6. It is logical to ask "why didn't the law work?"

   a. the framers of the law, plus the Motor Vehicle people, did not understand many of the insurance industry procedures such as the one-day rule.

   b. in matching VIN numbers, the question has to be asked "are VIN numbers contained in the records of the Motor Vehicle Department 100% accurate or is it possible that those submitted by the industry are more reliable than DMV?" In actual practice, we find that neither side has 100% accuracy.

c. in today's society, we still find the uninformed fully and honestly believing that, by punching one, two or three buttons, an immediate interface can be achieved and that, really, it's no big deal to achieve this form of Utopia. The message must be put forth to the legislators that the motor vehicle systems are designed for specific purposes such as issuing and keeping track of drivers throughout the state, of keeping track of the various vehicles registered, types, plate numbers, etc. Conversely, the insurance industry designs its software for specific purposes, working under a competitive environment. In short, while there are a few similarities, due to competitive practices, there are not that many similarities between the carriers themselves, which further adds to the confusion and impossible task of trying to get a 100% interface between the industry and DMV. The only feasible way of obtaining a good interface between industry and DMV is to set up a separate system, company by company, which has proven to be tremendously expensive, remembering that those costs will eventually be passed on to the taxpayers in any state.

d. the volume, as analyzed by DMV, turned out to be 14.5 million transactions on an annual basis. Without dedicated computers and with the problems enumerated, this proved to be an impossible task. As an industry, we also must ask "why we should be the policemen? Why should we be required to do the state's job of policing the small percentage of uninsured motorists?"

7. At present the law is not working and no suspensions have been made by DMV since the law went into effect on September 1, 1982. The industry is still in the process of submitting data to DMV which is not being utilized. The industry's fear of the third party liability makes it essential that they continue to report as provided by law.

8. The industry has worked with the Motor Vehicle Department and put together amended legislation, which we both believe will work and will be acceptable to all parties. A separate write-up is attached, with an overview on the old as well as the proposed legislation.

Historians have told us for many years that we should learn from past history in order to intelligently chart a future course. In the initial phase of this dissertation we learned that the reams and volume of paper which were sent to DMV turned out to be unmanageable. We waited some years and then got the idea that punching a few buttons on the computer, and having the industry submit the data on tape, would make everything well and would give us the information that was desired. This, too, did not work. We go back to the old adage - why should we harass 85 to 90% of the insuring public to get at the 10 to 15% uninsureds. We know from history that the cost to the public of getting that small percent of uninsured to become insured is an astronomical sum when used on an individual basis. In New York we must also ask "is the public willing to pay the $10 to $14 million price tag which has been put on this project?" In closing, let me also add that the Motor Vehicle Department of the great State of New York tried its best, along with industry experts, to make this program work, but found it impossible. DMV unfortunately was saddled with a chore which it did not want and did not have the resources in manpower and money to put into effect.

KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B. Docking State Office Building
Topeka, Kansas 66612-1588

MEMORANDUM

TO: **The Honorable Dale Sprague, Chairman**
House Committee on Insurance

FROM: **Kansas Department of Revenue**

RE: **H.B. 2313**

DATE: **February 20, 1989**

The Department of Revenue estimates that the number of uninsured vehicles in the State of Kansas is between five and eight percent. The percentage has remained virtually the same since 1972 - one year after the legislature enacted "NO FAULT" compulsory insurance. The legislature has amended the law several times for better identification of uninsured vehicles but with little variance in the reduction of uninsured vehicles.

One of these amendments required companies to notify the Division of Vehicles of all policy cancellations which was similar, but not as encompassing as the present proposal contained in H.B. 2313. This became known as the "shotgun" approach. If the division fired enough buckshot it would hit the uninsured motorist. It did that! Out of 25,000 insurance cancellations per month, 2,000 uninsured motorists per month were "hit." In the process 23,000 motorists who simply changed companies, or traded, sold or junked vehicles were also "hit" causing them the inconvenience and expense of verifying coverage for no valid reason and resulted in bad public relations to the state and numerous complaints to legislators. The present proposal will magnify this problem many times.

In 1983, the legislature wisely "junked" this system and instituted the present system which was strengthened last year by recommendations from an ad hoc committee chaired by Representative Sprague and composed of representatives of the Division of Vehicles, the insurance industry, law enforcement personnel, courts of law, prosecutors and the insurance department. This method of enforcement is explained in the pamphlet that has been distributed to you. If the various entities involved - law enforcement, courts, the Division of Vehicles and the insurance companies - properly perform their part, this method will work to identify uninsured motorists at the least expense to all concerned.

The most effective provision of the present law, although it causes considerable "paperwork" and labor to administer, requires the Division of Vehicles to monitor the bad driver - those convicted of serious traffic offenses who are most likely to avoid insuring their vehicles because of the cost - by requiring that they have the insurance company maintain an insurance filing with the division and notify the division whenever their policies are terminated. This is not unlike the procedure proposed by H.B. 2313 except that now the division keeps track of only the bad driver, not all vehicle owners.

H.B. 2313 proposes a system instituted in the State of New York in 1982 and ended in a fiasco after a general uprising by motorists in that state, as explained in the letter handed out earlier.

Because of the costs and administrative problems that the bill will cause and because of problems associated with a similar law in the State of New York, we urge the Committee to delete the amendment to subparagraph (e) and retain the wording in subparagraph (d) that is proposed to be deleted. We recommend that the word "suspend" in lines 184 and 207 be changed to "revoke" to eliminate an accounting, storage and return of license tag problems. The word "suspend" should be added to line 185 preceding the word "driving."

Thank you for the opportunity to express the Department's opposition to H.B. 2313.

Testimony
Before the House Insurance Committee
February 20, 1989
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

We appreciate the opportunity to appear today in opposition to House Bills 2313 and 2325. While we understand and agree with the concern of the sponsors of these bills over uninsured drivers in Kansas, we must reluctantly oppose the change incorporated in these two proposals.

HB 2313, as we understand it, would require insurance companies to provide duplicate I.D. cards or certificates of insurance and would require vehicle owners to provide a copy of this proof of insurance either through a mailed-in registration or at the time they register a vehicle in person.

The bill also requires notification of all policy cancellations and new policies written by insurance companies to the Director of Motor Vehicles. The Director must then verify that continuous coverage has been in force for every vehicle owner in the state, approximately one million and a half individuals, or suspend their license and registration after a notice and hearing.

The bill would also require local law enforcement agencies to pick up license plates on vehicles where the owners' registration and license has been suspended.

HB 2325 requires each owner to obtain from their agent a serially numbered certificate signed by the agent showing evidence of insurance no more than ten days prior to the date the owner registers the vehicle.

A special study committee was formed in 1987 during the interim

Attachment10

and chaired by Representative Sprague that thoroughly reviewed this entire area. The study committee was composed of representatives of virtually every interest group, state or local agency affected by this problem. Most of the ideas contained in House Bills 2313 and 2325 were considered by that study group, but rejected as being impractical.

In fact, the concepts in HB 2313 are very similar to the way the law was prior to its being substantially revised in the early 1980's because it was not workable.

Since somewhere between 90-95% of all vehicle owners do maintain insurance, it would place an added burden on them and a tremendous additional burden on the Department of Motor Vehicles. We doubt that the state is willing to fund the Department adequately enough for it to properly match and follow-up on all the changes that occur on individual and business auto insurance coverages during a year. All the vehicle changes, agent and insurance company changes that occur would be staggering, multiplied by the number of vehicles in Kansas.

Matching errors would occur and companies writing new coverage may not be able to send the notice to the Department quick enough to avoid the inevitable hassle of innocent owners.

The state could spend an inordinate amount of time to try to improve on an already effective system that has 90-95% of the drivers insured. In the meantime, there will be a much larger number of innocent people irate over the inconvenience, embarrassment and cost of fighting incorrect suspensions.

HB 2325 would place a tremendous additional administrative burden on insurance agents and more importantly, on consumers, again to try and force a relatively small percentage of drivers to carry insurance.

HB 2325 would not be effective because insureds could still cancel the coverage as soon as the certificate was issued. In addition, they could conceivably forge the certificates.

We are not sure of the idea behind serially numbered forms, but do not believe it would help eliminate forgeries without elaborate safeguards built into the system that would be very costly and time consuming for all.

Unfortunately, we can think of no better way to enforce Kansas' mandatory auto insurance law than the present statutes. We are convinced that if local law enforcement agencies, local courts and the state would do everything possible to use the procedures built into the current law, many of the present violators of the mandatory insurance requirement would be prosecuted.

There is simply no better, feasible way to force all vehicle owners to carry continuous insurance unless we go to annual, prepaid, non cancellable auto insurance policies. An idea that would work a tremendous hardship on people who already have trouble meeting monthly or quarterly premiums and not a concept we could endorse.

Thank you very much for the opportunity to appear today. We would be happy to answer any questions or provide any additional information.