

Approved _____ Date 4/9/92

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at _____
Chairperson

9:17 a.m./~~pm~~ on Wednesday, April 1, 1992 in room 529-S of the Capitol.

All members were ~~present~~.

Committee staff present:

Fred Carman, Revisor
Bill Wolff, Research
June Kossover, Committee Secretary

Conferees appearing before the committee:

Richard Mason, Kansas Trial Lawyers Association
David Hanson, Kansas Association of Property and Casualty Companies
William Sneed, State Farm Insurance Company
Lee Wright, Farmers Insurance Group

The meeting was called to order by Chairman Bond at 9:17 a.m.

Senator Strick made a motion to approve the minutes of the meeting of March 31, 1992 as submitted. Senator Parrish seconded the motion. The motion carried.

The Chairman opened the hearing on HB 2126, a bill which pertains to uninsured or underinsured motorist liability coverage. Chairman Bond thanked Senator Yost for chairing the subcommittee assigned to work on this bill and the trial lawyers and insurance industry representatives for working together to try to reach a compromise on this legislation.

Richard Mason, Kansas Trial Lawyer's Association, addressed the committee, stating this bill was introduced during the 1991 session in an attempt to define underinsured motorist coverage. After numerous meetings between the KTLA and the insurance representatives, the two parties agreed to deal with only one subject: the issue of multiple claimants receiving full benefits from underinsured motorist coverage; however, the Executive Committee of the KTLA feels that the language in the latest compromise does not fully take care of multiple claims.

David Hanson, Kansas Association of Property and Casualty Companies, presented a proposed balloon amendment (Attachment #1). Mr. Hanson stated that both sides have agreed to limit the bill to the issue of underinsured coverage. Mr. Hanson explained the term "offset" as being the difference between the liability coverage of the driver at fault and the underinsured coverage of the injured party. In response to Senator Bond's question, Mr. Hanson clarified that under current law, if drivers have the same coverage, no underinsured coverage is available.

William Sneed, State Farm Insurance, advised the committee that the insurance industry and the trial lawyers have worked very hard to arrive at a compromise and that the bill would not affect State Farm since that company already provides additional underinsured coverage in multi-claimant situations. In response to Senator McClure's question, Mr. Sneed advised that the affect on premium is minimal with the bill as amended but that the original bill would have had much greater impact on insurance rates.

Lee Wright, Farmers Insurance Group, advised the committee that Farmers also already handles multiple claim situations with different limits just as State Farm does.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:17 a.m./~~p.m.~~ on Wednesday, April 1, 19 92

Mr. Mason further stated that the amended bill would address only minimum coverage to minimum coverage situations and that the law should state clearly what is being done and the reasons for doing so. Mr. Mason requested the committee to direct all parties to develop acceptable language to deal with multiple claims when there is minimum to minimum coverage.

Senator Parrish made a motion to amend HB 2126 with the language suggested in the balloon with some modifications on page two to be agreed upon by representatives of the insurance industry and the KTLA. Senator McClure seconded the motion. The motion carried.

Senator Yost made a motion to pass HB 2126 favorably as amended. Senator Parrish seconded the motion. The motion carried.

The committee adjourned at 9:55 a.m.

HOUSE BILL No. 2126

By Committee on Insurance

2-4

11 AN ACT relating to ~~automobile liability insurance policies; concern-~~ motor vehicle
 12 ing coverage for injury or death caused by uninsured and un-
 13 derinsured motorists; ~~concerning subrogation of insurers providing~~ (delete)
 14 ~~payments under such coverage; concerning the award of attor-~~
 15 ~~ney fees for failure to provide personal injury protection~~
 16 ~~benefits; amending K.S.A. 40-287 and 40-3111 and K.S.A. 1990~~
 17 ~~Supp. 40-284 and repealing the existing sections.~~

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

19 Section 1. K.S.A. 1990 Supp. 40-284 is hereby amended to read
 20 as follows: 40-284. (a) No ~~automobile liability insurance policy cov-~~ motor vehicle
 21 ~~ering liability arising out of the ownership, maintenance, or use of~~
 22 ~~any motor vehicle shall be delivered or issued for delivery in this~~
 23 ~~state with respect to any motor vehicle registered or principally~~
 24 ~~garaged in this state, unless the policy contains or has endorsed~~
 25 ~~thereon, a provision with coverage limits equal to the limits of li-~~
 26 ~~ability coverage for bodily injury or death in such ~~automobile liability~~ motor vehicle~~
 27 ~~insurance policy sold to the named insured for payment of part or~~
 28 ~~all sums which the insured or the insured's legal representative shall~~
 29 ~~be legally entitled to recover as ~~damages from the uninsured owner~~ actual~~
 30 ~~or operator of a motor vehicle because of bodily injury, sickness or~~
 31 ~~disease, including death, resulting therefrom, sustained by the in-~~
 32 ~~sured, caused by accident and arising out of ownership, maintenance~~
 33 ~~or use of such motor vehicle, or providing for such payment irre-~~
 34 ~~spective of legal liability of the insured or any other person or~~
 35 ~~organization. No insurer shall be required to offer, provide or~~
 36 ~~make available coverage conforming to this section in connec-~~
 37 ~~tion with any excess policy, umbrella policy or any other policy~~
 38 ~~which does not provide primary motor vehicle insurance for~~
 39 ~~liabilities arising out of the ownership, maintenance, operation~~
 40 ~~or use of a specifically insured motor vehicle. No insurer shall~~
 be required to offer, provide or make available coverage conforming
 to this section in connection with any excess policy, umbrella policy

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1 or any other policy which does not provide primary motor vehicle
2 insurance for liabilities arising out of the ownership, maintenance,
3 operation or use of a specifically insured motor vehicle.

4 (b) Any uninsured motorist coverage shall include an underin-
5 sured motorist provision with coverage limits equal to the limits of
6 liability provided by such uninsured motorist coverage which en-
7 ables the insured or the insured's legal representative to recover
8 from the insurer the amount of damages for bodily injury or death
9 to which the insured is legally entitled from the owner or operator

10 ~~of another motor vehicle with coverage limits equal to the limits~~
11 ~~of liability provided by such uninsured motorist coverage to~~
12 ~~the extent such coverage the right to recover damages exceeds the~~
13 ~~limits of insured's recovery of damages from the bodily injury cov-~~
14 ~~erage carried by the owner or operator of the other motor vehicle.~~

15 The underinsured motorist coverage obligation shall commence at
16 the level of the other motor vehicle's applicable limit of liability,
17 unless the other motor vehicle's applicable limit of liability has been
18 exhausted by payment of multiple claims. Nothing in this subsection
19 shall be construed to allow recovery under any underinsured mo-
20 torist coverage in excess of the policy limits of such coverage.

21 (c) The insured named in the policy shall have the right to reject,
22 in writing, the uninsured motorist coverage required by subsections
23 (a) and (b) which is in excess of the limits for bodily injury or death
24 set forth in K.S.A. 40-3107 and amendments thereto. A rejection
25 by an insured named in the policy of the uninsured motorist coverage
26 shall be a rejection on behalf of all parties insured by the policy.
27 Unless the insured named in the policy requests such coverage in
28 writing, such coverage need not be provided in any subsequent
29 policy issued by the same insurer for motor vehicles owned by the
30 named insured, including, but not limited to, supplemental, renewal,
31 reinstated, transferred or substitute policies where the named in-
32 sured had rejected the coverage in connection with a policy pre-
33 viously issued to the insured by the same insurer.

34 (d) Coverage under the policy shall be limited to the extent that
35 the total limits available cannot exceed the highest limits of any
36 single applicable policy, regardless of the number of policies in-
37 volved, persons covered, claims made, vehicles or premiums shown
38 on the policy or premiums paid or vehicles involved in an accident.

39 (e) Any insurer may provide for the exclusion or limitation of
40 coverage:

41 (1) When the insured is occupying or struck by an uninsured or underinsured
42 automobile or trailer owned or provided for the insured's regular
43 use;

actual

of an underinsured motor vehicle. The maximum liability of the underinsured motorist coverage shall be the lowest of:

- (1) the difference between the policy limit of such coverage and the amount paid in compensatory damages to the insured by and for any person or organization who may be legally liable for the bodily injury or death;
- (2) the amount of compensatory damages established, but not paid under any agreement, settlement or judgment with or for the person or organization legally liable for the bodily injury or death; or
- (3) the limits of liability under such coverage to the extent such coverage exceeds the limits of the bodily injury liability coverage

1 (2) when the uninsured ~~automobile~~ is owned by a self-insurer or _____ or underinsured motor vehicle
2 any governmental entity;

3 (3) when there is no evidence of physical contact with the un-
4 insured ~~motor vehicle~~ and when there is no reliable competent _____ or underinsured
5 evidence to prove the facts of the accident from a disinterested
6 witness not making claim under the policy;

7 (4) to the extent that ~~duplicate~~ workers' compensation benefits _____ (delete)
8 apply;

9 (5) when suit is filed against the uninsured ~~motorist~~ without no- _____ or underinsured
10 tice to the insurance carrier; and

11 (6) to the extent that ~~duplicate~~ personal injury protection ben- _____ (delete)
12 efits apply.

13 (f) An underinsured motorist coverage insurer shall have sub-
14 rogation rights under the provisions of K.S.A. 40-287 and amend-
15 ments thereto. If a tentative agreement to settle for liability limits
16 has been reached with an underinsured tortfeasor, written notice
17 must be given by certified mail to the underinsured motorist cov-
18 erage insurer by its insured. Such written notice shall include written
19 documentation of pecuniary losses incurred, including copies of all
20 medical bills and written authorization or a court order to obtain
21 reports from all employers and medical providers. Within 60 days
22 of receipt of this written notice, the underinsured motorist coverage
23 insurer may substitute its payment to the insured for the tentative
24 settlement amount. The underinsured motorist coverage insurer is
25 then subrogated to the insured's right of recovery to the extent of
26 such payment and any settlement under the underinsured motorist
27 coverage. If the underinsured motorist coverage insurer fails to pay
28 the insured the amount of the tentative tort settlement within 60
29 days, the underinsured motorist coverage insurer has no right of
30 subrogation for any amount paid under the underinsured motorist
31 coverage.

32 ~~Sec. 2. K.S.A. 40-287 is hereby amended to read as follows: 40-
33 287. The policy or endorsement affording the coverage specified in
34 K.S.A. 40-284, and amendments thereto, may further provide that
35 payment to any person of sums as damages under such coverage
36 which duplicates sums received as damages shall operate to subrogate
37 the insurer to any cause of action in tort which such person may
38 have against any other person or organization legally responsible for
the bodily injury or death because of which such payment is made,
and the insurer shall be subrogated, to the extent of such payment,
41 to the proceeds of any settlement or judgment that may thereafter
42 result from the exercise of any rights of recovery of such person
43 against any person or organization legally responsible for said bodily~~ _____ (delete)

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1 injury or death for which payment is made by the insurer. Such
2 insurer may enforce such rights in its own name or in the name of
3 the person to whom payment has been made, as their interest may
4 appear, by proper action in any court of competent jurisdiction.

5 ~~Sec. 3. K.S.A. 40-3111 is hereby amended to read as fol-~~
6 ~~lows: 40-3111. (a) A physician, hospital, clinic or other person~~
7 ~~or institution lawfully rendering treatment to an injured person~~
8 ~~for an injury covered by personal injury protection benefits and~~
9 ~~a person or institution providing rehabilitative occupational~~
10 ~~training following the injury, may charge a reasonable amount~~
11 ~~for the products, services and accommodations rendered. The~~
12 ~~charge shall not exceed the amount the person or institution~~
13 ~~customarily charges for like products, services and accommo-~~
14 ~~dations in cases not involving insurance, and allowances for~~
15 ~~medical benefits under this act do not include that portion of~~
16 ~~the charge for a room in any hospital, clinic, convalescent or~~
17 ~~nursing home, extended care facility or any similar facility in~~
18 ~~excess of the reasonable and customary charge for semiprivate~~
19 ~~accommodations unless intensive care is medically required.~~

20 (b) An attorney is entitled to a reasonable fee for advising
21 and representing a claimant in an action for personal injury
22 protection benefits which are overdue. The attorney's fee shall
23 be a charge against the insurer or self-insurer in addition to
24 the benefits recovered, if the court finds that the insurer or
25 self-insurer unreasonably refused to pay the claim or unrea-
26 sonably delayed in making proper payment.

27 Within the discretion of the court, an insurer or self-insurer
28 may be allowed an award of a reasonable sum as attorney's
29 fee, based upon actual time expended, and all reasonable costs
30 of suit for its defense against a person making claim against
31 such insurer or self-insurer where such claim was fraudulent,
32 excessive or frivolous, and such attorney's fee and all such
33 reasonable costs of suit so awarded may be treated as an offset
34 against any benefits due or to become due to such person.

35 ~~Sec. 4-3. K.S.A. 40-287 and 40-3111 and K.S.A. 1990 Supp.~~
36 ~~40-284 are hereby repealed.~~

37 Sec. 5 4. This act shall take effect and be in force from and after
38 ~~its publication in the statute book.~~

is

January 1, 1993.