Approved: February 8, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on January 31, 1995 in Room 527S of the Capitol.

All members were present except: Representative Ellen Samuelson, Excused

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: David Ross, KS Assn of Life Underwriters
Bill Sneed, State Farm Insurance
Tom Wilder, Kansas Insurance Commissioner's Office
Jim Nevins, Kansas Insurance Commissioner's Office
Don Lindsey, United Transportation Union
Gerald W. Scott, Kansas Trial Lawyers Association

Others attending: See attached list

David Ross, representing the Kansas Association of Life Underwriters, requested the introduction of legislation. The proposal would expand the use for accelerated benefits to allow persons normally considered permanently confined to a nursing home the latitude to receive in-home care (Attachment 1). Ideally this would expand the spending power of their money and perhaps reduce the need for assistance from the state. Life insurance is currently involved in the division of assets.

Representative Cox moved that this proposal be introduced into legislation. The motion was seconded by Representative Smith. Motion carried.

Representative Correll asked for a cleanup bill which would repeal the Kansas Certificate Guaranty Bond Fund as there are no monies left in the fund.

Representative Dawson moved for the introduction of this bill and Representative Smith seconded the motion. The motion carried.

Hearing on HB 2081--Automobile liability insurance, exclusion or limitations of coverage
Bill Sneed, representing State Farm Insurance, stated this bill deals with uninsured and underinsured motorist coverage under the Kansas no-fault law (Attachment 2). This amendment will correct a problem in multi-car issues that was created based upon the Kansas Supreme Court's decision in Farmers Insurance Group v. Gilbert. Underinsured motorists is designed to protect the insured where the at-fault driver has liability coverage less than the insured's underinsured motorist coverage. This bill was passed by the House and Senate last year but was vetoed by the Governor.

The position of State Farm is that if an individual is injured and has insurance on that vehicle, it is that policy that the insured should look to for any available uninsured or underinsured coverages rather than making a claim on the vehicle which had the most coverage. State Farm issues a separate policy for each vehicle insured rather than one policy with various vehicles listed on it for an individual owner/purchaser. The pricing of the insurance is based on the fact that only one vehicle is insured and could be involved in an accident with an uninsured driver. The passage of the bill would eliminate the requirements that companies are faced with when issuing individual policies on specific automobiles and/or motorcycles. Additional costs have been added by companies to ascertain equal policy limits on all vehicles.

Tom Wilder of the Insurance Commissioner's Office introduced Jim Newins, Fire and Casualty Policy Examiner, who opposed the bill for the following reasons (Attachment 3):

1. Bill will prevent a non-owner from collecting from his or her own uninsured motorist coverage. The non-owner must look to the owned vehicle as the sole source of recovery.

2. Insurance companies can reduce losses by making sure the specific company insures all of the vehicles of the household and ensuring that all of the vehicles maintain the same limits.

3. Coverage will be taken away from the consumer.

Don Lindsey, representing the United Transportation Union and Brotherhood of Locomotive Engineers, spoke in opposition (Attachment 4). The wording, if enacted, will prohibit an individual who is regularly transported in a vehicle provided by his employer, from filing a claim against his or her insurance company if involved in an accident with an uninsured or underinsured motorist. He explained that members of his organization are transported daily to and from their place of employment in vehicles owned by motels where they stay between runs (railroad). The vehicles are usually old and not heavily insured.

The Committee discussed the fact that UM and UIM is really for individuals and only attached to motor vehicles (portability).

Gerald W. Scott, practicing attorney from Wichita, Kansas, represented the Kansas Trial Lawyers Association in opposition to the proposed amendment (Attachment 5). He reviewed the history of the original compromise between the insurance industry and the KTLA. This resulted in an anti-stacking amendment but allowed uninsured/underinsured motorist coverage to apply no matter where the named insured is or what vehicle the named insured is occupying when the named insured is injured, so long as the vehicle was insured under a current policy. The insured could only collect on one policy but could collect from the policy with the highest limits. KTLA believes this valuable coverage should remain unchanged on the grounds consumers have paid the premium for the policy coverage for the past four decades and should be allowed to continue to make claims on those policies.

Representative Correll moved for the approval of the minutes of January 25, 1995. The motion was seconded by Representative Gilbert. Motion carried.

The meeting was adjourned at 5:00 p.m. The next meeting is scheduled for February 1, 1995.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 1-31-95

NAME	REPRESENTING
Kimberly Phillips	State Farm
Bill Sneed	State Farm
L.M. Cornwell	Ks Assoc of Prop & Casualty Cos
Mitch Butler	State Farm Ins Cos
Gerald W Scott	KTLA
Roger Fraude	IFC
Kevin Davis	Am. Family Ins Group
Tom Wilder	Ks Dept of Insurance
Jim Newins	Ks Dept of Insurance
Jim McHaff	KSAFL-CIO
Jim Keele	BLE
Don Seay Jr	UTU
David A. Ross	Ks. Assn. Life Underwriters.

Mr. Chairman and members of the committee,

I am David Ross representing the Kansas Association of Life Underwriters. Thank-you for the opportunity to appear today to request introduction of a bill expanding the use for accelerated benefits. Accelerated benefits is an option available to life insurance and annuity policyholders that permits them to receive all or a portion of the face amount of their policy prior to their death. Access to the policy face amount is limited to persons that are terminally ill having 6 months or less to live or persons who upon physician certification are permanently confined to a nursing home. My proposal pertains to the nursing home benefit. Enactment would provide persons normally considered permanently confined to a nursing home the latitude to receive in -home care therefore, expanding the spending power of their money and perhaps reducing the need for assistance from the state.

Attachment 1

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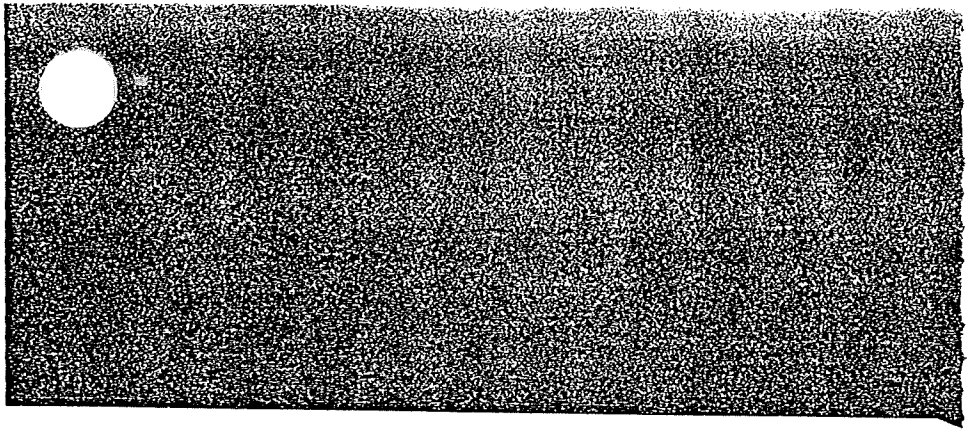

ıt makes the decision. The refund shall accompany the notice of adverse underwriting decision.

Sec. 2. K.S.A. 1989 Supp. 40-2,112 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after publication in the statute book.

ıpproved April 12, 1990.

CHAPTER 164

House Bill No. 2723

ACT relating to insurance; authorizing provisions providing for acceleration of life and annuity benefits in certain policies; amending K.S.A. 1989 Supp. 40-401 and repealing the existing section.

it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1989 Supp. 40-401 is hereby amended to read follows: 40-401. Any 10 or more persons, a majority of whom are izens of this state, may associate in accordance with the provisions this code and form an incorporated company, upon either the ck or mutual plan, to make insurance upon the lives of persons d every insurance appertaining thereto or connected therewith d to grant, purchase or dispose of annuities. Such companies may orporate in their policies provisions for the waiver of premiums for the granting of an annuity to the insured, or for special rrender values or other benefits in the event that the insured shall m any cause become totally and permanently disabled, *or for celeration of life or annuity benefits in advance of the time they uld otherwise be payable subject to such reserve and other reg- itory standards as the commissioner may prescribe by adminis- itive rules and regulations, and* any such company may provide the payment of a larger sum if death is caused by accident than it results from any other causes. *Prior to the payment of any celerated benefit, the insurer shall receive from any assignee or evocable beneficiary of the policy a signed acknowledgment of ncurrence for the payment.* For the purposes of this section, "to- ly and permanently disabled" means disabled continuously for a riod, such period to be specified in any such provision, of not s than 60 days nor more than one year, except this provision shall t apply to and specifically excludes group life insurance. Such mpany may make insurance on the health of individuals, against cidental personal injury, disablement or death and against loss, bility or expense on account thereof. Such company so transacting

Any provision providing for acceleration of life or annuity benefits for persons who would be otherwise permanently confined to a nursing home must provide an option permitting care in the persons residence.

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MEMORANDUM

TO: The Honorable William F. Bryant, Chairman
House Financial Institutions and Insurance Committee

FROM: William W. Sneed
Legislative Counsel
The State Farm Insurance Companies

DATE: January 31, 1995

RE: H.B. 2081

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent The State Farm Insurance Companies. Initially, let me thank you for introducing H.B. 2081 at our request. As I stated to the Committee at the time of introduction, H.B. 2081 is an amendment to K.S.A. 40-284. This statute deals with uninsured and underinsured motorist coverage under the Kansas no-fault law. This amendment will correct a problem in multi-car issues that was created based upon the Kansas Supreme Court's decision in *Farmers Insurance Group v. Gilbert*, 14 Kan.App.2d 395, 247 Kan. 587 (1990). Further, H.B. 2081 is identical to H.B. 2833, which was passed by both houses of the Kansas Legislature in 1994. Unfortunately, Governor Finney vetoed the bill and no further action was taken in 1994.

Before discussing the *Gilbert* decision and our proposal, please accept the following background information on uninsured motorist coverage ("UM") and underinsured motorist coverages ("UIM").

Uninsured motorist coverage was developed in the mid-1950s. It was designed as an alternative to compulsory liability insurance so that financially responsible persons could protect

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themselves from injuries caused by uninsured drivers. As states began to require the coverage, some made it mandatory on all automobile liability insurance policies. In others, the coverage is subject to a right of rejection by the insured. In most states, limits of liability under UM coverage are available equal to the limits of bodily injury liability on the underlying policy, subject to a maximum, such as $25,000.00 per person, $50,000 per accident, as is the case in Kansas. This limit is rational since umbrella policies are generally written over these primary limits.

When insurers began offering and states began mandating offers of higher limits of uninsured motor vehicle coverage, there were situations where an insured carrying high limits of uninsured coverage would be in a more favorable position being injured by an uninsured motorist than by a motorist carrying minimum financial responsibility coverage. Because of this unanticipated anomaly, underinsured motorist coverage (UIM) was created. UIM is designed to protect the insured where the at-fault driver has liability coverage less than the insured's underinsured motorist coverage.

With that background, a review of the *Gilbert* decision is appropriate. Factually, the case states that Gilbert was insured by Farmers under a separate liability policy for his motorcycle, his van and his automobile. Mr. Gilbert carried uninsured motorist limits on the policies for the van and automobile of $50,000.00, and the uninsured motorist limit on the motorcycle was only $25,000.00. Gilbert was seriously injured while riding his motorcycle. The driver of the automobile striking the motorcycle had $25,000.00 in liability insurance. Gilbert was paid the $25,000.00 liability limits of the striking driver's automobile policy. Gilbert then turned to his own policy for underinsured motorist coverage. Instead of making a claim against the policy on the motorcycle, Gilbert successfully collected underinsured motorist coverage under the higher limit automobile policy. Farmers argued that the coverage under either the automobile or van policy was excluded

because Gilbert was riding a vehicle that was not insured under either policy. Gilbert asserted, and the Supreme Court agreed, that the exclusion in the two automobile policies was broader than the exclusion authorized by statute, and therefore unenforceable.

The Kansas courts have stated on numerous occasions that the exclusions authorized by the Kansas statute are to be construed narrowly. The court believed the legislative intent in drafting such a narrow exclusion was apparently limited to preventing persons who have failed to insure their own vehicles from recovering on the policies of others or on policies of their own issued for other vehicles. The court stated in the *Gilbert* case that the motorcycle owned and operated by Gilbert was insured; thus, the exclusion in the automobile policy would not apply. Therefore, the Supreme Court has stated it will narrowly define exclusions, and only where the legislature has specifically acted on an exclusion will they provide such an interpretation.

We recognize the Supreme Court's historical analysis of the Kansas uninsured motorist coverage law and the exclusions written in the statute . We also understand the public policy behind the Court's rationale in narrowly defining exclusions. However, the outcome in *Gilbert* was not intended when the uninsured motorist law was enacted, and as such we have offered the proposed amendment in H.B. 2081 to correct this decision. If an individual is injured and does in fact have insurance on that vehicle, it is that policy that the insured should look to for any available uninsured or underinsured coverages. The pricing of the insurance is based on the fact that only one vehicle is insured and could be involved in an accident with an uninsured driver. Under the law as interpreted in *Farmers v. Gilbert*, three of Mr. Gilbert's vehicles could be involved in accidents with uninsured drivers at the same time, and he could legally make three claims under one policy. If the vehicles are insured by different companies, the insurers will be unaware of other cars in the household which may

be "covered" under the *Gilbert* law. To allow an individual to purchase higher limits on one vehicle and lower limits on a different vehicle and thereafter allow that individual to collect on the higher limit policy skews the correct pricing of the product and does not further public policy of mandatory automobile insurance.

Additionally, passage of this bill eliminates the requirement that companies are faced with when issuing individual policies on specific automobiles and/or motorcycles. With the *Gilbert* decision, these companies have been forced to incur additional costs to ascertain equal policy limits on all vehicles. Again, we believe this adds additional cost to the system and does not benefit insureds who, for legitimate reasons, wish to purchase different policy limits on different vehicles.

We appreciate the opportunity to present our testimony. Based upon the foregoing, we believe it would be in the public's best interest to pass this proposed amendment. Thus, we respectfully request your favorable action on H.B. 2081.

I appreciate your consideration, and if you have any questions, please feel free to contact me.

Respectfully submitted,

William W. Sneed

William W. Sneed

LEGISLATIVE TESTIMONY

ON BEHALF OF HOUSE BILL NO. 2081

PRESENTED BY

JAMES G. NEWINS

FIRE AND CASUALTY POLICY EXAMINER

KANSAS INSURANCE DEPARTMENT

WE APPRECIATE THE OPPORTUNITY TO TESTIFY BEFORE THIS COMMITTEE CONCERNING HOUSE BILL NO. 2081.

HOUSE BILL NO. 2081 APPEARS TO BE IDENTICAL IN CONTENT WITH HOUSE BILL NO. 2833(AHC) OF THE 1994 LEGISLATIVE

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SION. HOUSE BILL NO. 2833 WAS PASSED BY BOTH HOUSES OF THE LEGISLATURE BUT WAS ULTIMATELY VETOED BY THE GOVERNOR.

HOUSE BILL NO. 2081 APPEARS TO MODIFY THE 1990 KANSAS SUPREME COURT CASE FARMERS V. GILBERT. IN THIS CASE, GILBERT WAS RIDING HIS INSURED MOTORCYCLE WHICH WAS STRUCK BY A MOTORIST WHO CARRIED THE SAME LIABILITY LIMITS AS GILBERT'S MOTORCYCLE. GILBERT RECEIVED THE FULL $25,000 LIMIT FROM THE NEGLIGENT PARTY'S AUTOMOBILE LIABILITY POLICY. GILBERT'S ACTUAL DAMAGES EXCEEDED $50,000 AND HE SOUGHT TO RECOVER AN ADDITIONAL $25,000 FROM THE UNDERINSURED MOTORIST COVERAGE OF HIS AUTOMOBILE POLICY. THE AUTOMOBILE POLICY HAD HIGHER LIABILITY AND UNINSURED MOTORIST LIMITS THAN THE MOTORCYCLE AND THE NEGLIGENT PARTY'S AUTOMOBILE LIABILITY POLICY. AS THE UNINSURED MOTORIST LIMITS OF GILBERT'S AUTOMOBILE POLICY EXCEEDED THE LIABILITY LIMITS OF THE NEGLIGENT PARTY, GILBERT MADE AN UNDERINSURED MOTORIST CLAIM TO FARMERS INSURANCE COMPANY. FARMERS INSURANCE COMPANY,

EVER, ARGUED THAT ITS POLICY LANGUAGE PROHIBITED GILBERT FROM COLLECTING THE UNDERINSURED MOTORIST COVERAGE FROM HIS AUTOMOBILE POLICY. THE SUPREME COURT DETERMINED THAT THE POLICY LANGUAGE IN QUESTION WAS AN EXCLUSION NOT PERMITTED BY K.S.A. 40-284 AND AWARDED GILBERT THE UNDERINSURED MOTORIST COVERAGE FROM HIS AUTOMOBILE POLICY.

AS STATED ABOVE, HOUSE BILL NO. 2081 APPEARS TO MODIFY THIS CASE; HOWEVER, THE KANSAS INSURANCE DEPARTMENT OPPOSES THIS BILL FOR THE FOLLOWING REASONS:

1. THIS BILL WILL PREVENT A NON-OWNER, FALLING UNDER THE PROPOSED EXCLUSIONARY LANGUAGE, FROM COLLECTING FROM HIS OR HER OWN UNINSURED MOTORIST COVERAGE AND THE NON-OWNER MUST LOOK TO THE OWNED VEHICLE AS THE SOLE SOURCE OF RECOVERY. THE PROBLEM IS EXACERBATED BY THE FACT THAT K.S.A. 40-284(c) GIVES THE NAMED INSURED ON THE POLICY THE RIGHT TO REJECT

UNINSURED MOTORIST COVERAGE IN EXCESS OF THE MINIMUM FINANCIAL RESPONSIBILITY LIMITS OF K.S.A. 40-3107. THEREFORE, A NON-OWNER HAS TO RELY ON THE OWNER OF THE MOTOR VEHICLE TO PROVIDE ADEQUATE COVERAGE.

2. FROM OUR PERSPECTIVE, WE CAN SEE THAT THE INSURANCE INDUSTRY MAY WANT TO SUPPORT THIS BILL. IT APPEARS THAT THIS BILL WILL REDUCE THEIR EXPOSURE REGARDING CERTAIN UNINSURED MOTORIST LOSSES AND WILL NOT REQUIRE THE COMPANY TO THOROUGHLY UNDERWRITE THEIR BUSINESS. IT IS OUR OPINION THAT THE COMPANIES CAN REDUCE THEIR EXPOSURE TO "GILBERT" TYPE LOSSES BY MAKING SURE THE SPECIFIC COMPANY INSURES ALL OF THE VEHICLES OF THE HOUSEHOLD AND ENSURING THAT ALL OF THE VEHICLES MAINTAIN THE SAME LIMITS. EVEN IF A PARTICULAR COMPANY DOES NOT INSURE ALL VEHICLES IN THE HOUSEHOLD, IT CAN TAKE UNDERWRITING MEASURES SUCH

AS QUESTIONNAIRES TO ENSURE THAT THE OTHER VEHICLES ARE INSURED AT THE SAME LIMITS.

THE IMPACT THIS BILL WILL HAVE ON THE KANSAS INSURANCE DEPARTMENT IS MINIMAL. THE BILL, HOWEVER, WILL REQUIRE A ONE TIME INFLUX OF POLICY REVISIONS AS THE COMPANIES AMEND THEIR POLICIES TO COMPLY WITH THIS BILL. THIS BILL SHOULD ALSO REQUIRE THE CONSIDERATION OF A REDUCTION IN RATES DUE TO THE RESTRICTION OF COVERAGE.

IN CONCLUSION, THE KANSAS INSURANCE DEPARTMENT OPPOSES THIS BILL SINCE COVERAGE WILL BE TAKEN AWAY FROM THE CONSUMER. WE ALSO BELIEVE THAT CAREFUL UNDERWRITING BY THE INSURANCE INDUSTRY WILL PREVENT MANY OF THE "GILBERT" TYPE LOSSES.

JGN:crf

F1

united transportation union

DONALD F. LINDSEY, JR.
DIRECTOR/CHAIRMAN

KANSAS STATE LEGISLATIVE BOARD

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January 31, 1995

STATEMENT OF DONALD F. LINDSEY JR., DIRECTOR KANSAS STATE LEGISLATIVE BOARD UNITED TRANSPORTATION UNION IN OPPOSITION OF HOUSE BILL 2081

PRESENTED TO THE HOUSE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE HONORABLE BILL BRYANT, CHAIRMAN

My name is Don Lindsey, Legislative Director for the United Transportation Union in Kansas. I appear today on behalf of the UTU and the Brotherhood of Locomotive Engineers. The UTU and the BLE represent approximately 8,000 active and retired railroad workers and their families in Kansas. We appear today as an opponent to H.B. 2081.

House Bill 2081, which deals with uninsured and underinsured motorist coverage, appears to be an innocent bill. However, it is our organizations belief, that H.B. 2081 goes far beyond the stated intent of its proponents. K.S.A. 40-284 is dramatically changed with the addition of the wording *"such motor vehicle is not described in the policy under which the claim is made"*. This wording, if enacted, will prohibit an individual who is regularly transported in a vehicle provided by his employer, from filing a claim against his or her insurance company if involved in an accident with an uninsured or underinsured motorist.

Currently, across the state of Kansas, our members are transported daily to and from their place of employment in a vehicle owned by the motel where they stay. These vehicles are usually old cars, poorly maintained and often just capable of making the 2 to 4 mile round trip from the motel to the railroad yard. These vehicles are not heavily insured and the uninsured/underinsured provision of their policy would be minimal.

As railroad employees, we are covered under the Federal Employers Liability Act and therefore, if involved in an accident while being transported by or for our employer, we would not fall under the auspices of state workers compensation.

Last year on March 29, 1994, then Attorney General Robert Stephan issued an Attorney General's opinion regarding H.B. 2833, at the request of Senator Anthony Hensley. House Bill 2081 is identical to H.B. 2833, with the exception of the new language being added to H.B. 2081, in paragraph G. I have attached a copy of the Attorney General's opinion to my testimony and would direct your attention to the last paragraph, wherein, Attorney General Stephan states that **"H.B. 2833 broadens the narrow exclusion found in K.S.A. 40-284 (e) (1). The amendment in question found in 1994 H.B. 2833 would allow the insurer to exclude coverage when the named insured is injured in a vehicle either owned by him or provided for his regular use when that vehicle is not covered by the policy under which he is making a claim".**

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I would like to point out that the antistacking provision of K.S.A. 40-284 (d) was the product of a compromise between the Kansas Trial Lawyers and the insurance industry. It was agreed to prohibit an insured from making multiple claims regardless of the number of vehicles an individual might own and have insured. In turn, for this change in the law, the individual was limited to the extent that the total limits available could not exceed the highest limits of any single applicable policy.

Prior to this change in the law, if an insured had three vehicles with $100,000, $50,000, and $50,000 of uninsured/underinsured motorist coverage, he could file a claim not to exceed $200,000. After the compromise and under current law, he is now limited to a claim of $100,000. It now appears the insurance industry wants to cancel the compromise and place further limits on what an individual may claim under the law.

We believe that the changes to K.S.A. 40-284 will have a profound and adverse affect, not only to our membership but thousands of working Kansans, should they be involved in an accident with an uninsured or underinsured motorist while riding in a company car. This type of exclusion penalizes the responsible individual who buys sufficient insurance to protect himself and his family. Also, it must be pointed out, that employees have little choice in picking their vehicle or driver, when such is provided by their employer.

We feel it is improper for the state to exclude the citizens of Kansas from making a claim against insurance coverage, that they have purchased in good faith, merely to enhance the profit margins of insurance companies.

We respectfully request the committee to reject H.B. 2081.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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March 29, 1994

The Honorable Anthony Hensley
State Senator, Nineteenth District
State Capitol, Room 403-N
Topeka, Kansas 66612-1504

Re: Insurance--General Provisions--Uninsured Motorist Coverage and Underinsured Motorist Coverage; Rejection; Antistacking Provisions; Exclusions or Limitations of Coverage; Subrogation Rights of Underinsured Motorists Coverage Insurer

Dear Senator Hensley:

As state senator for the nineteenth district you inquire whether a certain proposed amendment found in 1994 house bill no. 2833 would bar an employee who is regularly transported in a vehicle provided by his employer from filing a claim under the employee's insurance policy if involved in an accident with an uninsured motorist, since the vehicle provided by the employer would not be listed on the employee's policy.

The bill amends K.S.A. 40-284(e)(1) which states:

> "(e) Any insurer may provide for the exclusion or limitation of coverage:
>
> "(1) When the insured is occupying or struck by an uninsured automobile or trailer owned or provided for the insured's regular use."

The house bill amends the subsection as follows:

> "(e) Any insurer may provide for the exclusion or limitation of coverage:

"(1) When the insured is occupying or struck by an uninsured automobile or trailer a motor vehicle owned by or provided for the insured's regular use, if such motor vehicle is not described in the policy under which the claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of the policy under which the claim is made."

The amendment limits the insured's insurance by not covering bodily injury sustained by a person while occupying any vehicle (owned by or provided for the person's regular use) that is not covered by the policy under which the claim is being made.

We cannot determine how a court might interpret and apply the amended statute under the hypothetical facts provided. We can however explain what the amendment to the statute is intended to do. First we will explain what the current law provides. It allows an insurer to exclude coverage if an insured is occupying or struck by an UNINSURED motor vehicle OWNED by the insured or furnished for his regular use. The amendment broadens the narrow exclusion by allowing the insurer to exclude coverage further by not allowing the insured to file under his uninsured motorists coverage unless the vehicle in which he incurred injury is covered by that policy. It is argued by proponents of the legislation that the amendment would allow a pedestrian or a passenger to make a claim under his own insurance if he is involved in an accident where he neither owns nor is involved in an accident in a vehicle that is "provided for his regular use." This argument however ignores the purpose of uninsured motorist coverage that was intended to apply no matter where the named insured is or what vehicle the named insured is occupying when he is injured, so long as the vehicle was insured under a current policy. See Farmers Ins. Co. v. Gilbert, 14 Kan.App.2d 395, 404-405 (1990). In other words the current statutory exclusion allows the insurer to exclude coverage only when the named insured has failed to insure the vehicle occupied at the time of the accident without regard to limiting him to any specific policy.

The amendment attempts to prevent the conclusion arrived at by the Kansas Court of Appeals and affirmed by the Kansas Supreme Court in Farmers Ins. Co. v. Gilbert, 14 Kan.App.2d 395, 247 Kan. 589 (1990). The court found language (identical to the amendment) that was included in Gilbert's policy, went beyond the statutory exclusions authorized by the current statute,

K.S.A. 40-284 subsection (e)(1) quoted above. The court reasoned that the exclusion authorized by current statute is a narrow one, intended to prevent persons who had failed to insure their own vehicles from recovering on the policies of others or on policies of their own issued for other vehicles. The exclusion, the court concluded, was applicable only to uninsured vehicles and in Gilberts, the insured's motorcycle involved in the accident was insured. The court allowed Mr. Gilbert, the insured, to recover under the uninsured motorist coverage that applied to his insured automobile because unlike liability insurance, uninsured/underinsured motorist coverage applied no matter what vehicle the name insured as occupying, so long as that occupied vehicle was not uninsured. In other words this amendment would not allow Mr. Gilbert (discussed above) to file an uninsured motorist coverage claim under his automobile's policy because he was injured while on his motorcycle. The amendment would limit him to filing a claim under the policy covering the motorcycle.

Thus in our opinion, 1994 house bill no. 2833 broadens the narrow exclusion found in K.S.A. 40-284(e)(1). The amendment in question found in 1994 house bill no. 2833 would allow the insurer to exclude coverage when the named insured is injured in a vehicle either owned by him or provided for his regular use when that vehicle is not covered by the policy under which he is making a claim.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

RTS:GE:jm

MEMORANDUM

TO: Chairman and House Financial Institutions and Insurance Subcommittee

FROM: Gerald W. Scott Kansas Trial Lawyers Association

DATE: January 31, 1995

RE: House Bill No. 2081

Mr. Chairman, Members of the House Financial Institutions and Insurance Subcommittee:

My name is Gerald W. Scott, a practicing attorney from Wichita, Kansas, appearing on behalf of the Kansas Trial Lawyers Association, to offer testimony on issues relating to uninsured and underinsured coverage as defined in K.S.A. 40-284. This subject has been one of controversy in prior legislative sessions since 1991 and KTLA was in hopes that the issue would not be raised again this year. However, since it has, we appreciate the opportunity to present testimony to you as the special committee on financial institutions and insurance studying the proposed changes of House Bill No. 2081.

A. LEGISLATIVE COMPROMISE OF 1981

The full legislative history of the 1981 amendment which for the first time allowed exclusions to K.S.A. 40-284 is set out in Appendix A attached hereto. The long and short of the 1981 changes is that the Kansas Trial Lawyers Association (KTLA) drafted and submitted proposed legislation to:

1. Raise liability limits of K.S.A. 40-3107 from $15,000/30,000 to $25,000/50,000;

2. Introduce underinsured motorist coverage into Kansas law; and

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3. Make mandatory the offering of uninsured motorist and underinsured motorist coverage in limits equal to the liability limits.

The insurance industry was very concerned about the court cases concerning "stacking" which allowed an insured to collect on each policy of insurance pyramiding each coverage on top of each other. Three policies of $25,000, $25,000, and $100,000 limits would provide $150,000 in available benefits.

A compromise between the Kansas Trial Lawyers Association and the insurance lobbyists was reached giving the insurance industry lobbyists the anti-stacking amendment they sought:

> "Coverage under the policy shall be limited to the extent **that the total limits available cannot exceed the highest limits of any single applicable policy**, regardless of the number of policies involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid or vehicles involved." (S.B. 371, Draft #2, S.B. 371) [As Amended by Senate on Final Action.] (Emphasis added)

but the insurance industry agreed to allow Uninsured/underinsured motorist coverage to apply no matter where the named insured is or what vehicle the named insured is occupying when the named insured is injured, so long as the vehicle was insured under a current policy. The insured could only collect on one policy, but could collect from the policy with the highest limits, subject only to the statutory limitations and exclusions found in K.S.A. 40-284(e)(1)(2)(3)(4)(5) and (6). Under this compromise, three policies of $25,000, $25,000, and $100,000 limits would provide only $100,000 in available benefits, not $150,000 as under stacking.

On one hand, the Legislature denied a "free ride" to an individual who is injured while driving or occupying or struck by an uninsured vehicle owned by or furnished for his or her regular use which he or she has failed to insure. On the other hand, the permissible exclusion contained in Subsection (e)(1) is very narrow, inasmuch as it applies only to "uninsured" vehicles, and does not permit insurance companies to exclude or limit uninsured/ underinsured motorist coverage when the insured is occupying or struck by an insured vehicle owned by the insured. Robert Jerry, Dean of the University of Kansas Law School, has written on this narrow scope of the exclusion contained in K.S.A. 40-284(e)(1) and has reached the following conclusion:

> However, earlier Kansas cases in validating exclusions for injuries arising as a result of occupying a vehicle (other than the insured vehicle) owned by the named insured do not seem to be affected by the amendments to § 284, since the amendments only authorize an exclusion for occupying an UNINSURED automobile owned by the insured or provided for the insured's use. (Jerry, 32 Kan.L.Rev. 344.) (Emphasis added.)

B. SCOPE OF UNINSURED/UNDERINSURED MOTORIST COVERAGE

Uninsured motorist coverage is first-party insurance, designed to protect the insured. Liability insurance is third-party insurance, designed to protect not the insured, but persons injured by the insured. (Robert Jerry, Dean, KU School of Law, *Understanding Insurance Law*, 32 Kan.L.Rev. 344, § 13 D(a), (1987).) The uninsured motorist insured need not be an occupant of a motor vehicle. There is no "occupancy" requirement for such a person, only a necessity that bodily injury be produced by an uninsured automobile. The person may be injured while a

pedestrian or engaged in any other non-vehicular activity. (11 Am.Jur. Trials, Uninsured Motorist Claims, § 8, p. 91.)

As early as 1970, the Kansas Supreme Court found that uninsured motorist protection provides the named insured with two kinds of coverage: while in his or her insured automobile and wherever else he or she may happen to be when he or she suffers bodily injury due to an uninsured motorist. (*Kansas Farm Bureau Ins. Co. v. Cool*, 205 Kan. 567, 471 P.2d 352 (1970)).

In 1973, the Kansas Supreme Court stated that "uninsured motorist coverage is not actually liability insurance, but more closely resembles limited accident insurance." (*Forrester v. State Farm Mutual Automobile Ins. Co.*, 213 Kan. 442, 448.)

Uninsured motorist coverage protects the named insured "wherever he may be, whether in the described vehicle, another owned vehicle, a non-owned vehicle, or on foot." (*Midwest Mutual Ins. Co. v. Farmers Ins. Co.*, 3 Kan.App.2d 630 (1979)). Uninsured motorist coverage is transitory in nature and is not limited to a particular insured vehicle.

The Kansas Court of Appeals has specifically held that an insurance contract provision attempting to exclude uninsured motorist coverage for injuries arising as a result of the named insured occupying a vehicle which is owned by the named insured other than the insured vehicle is a void attempt to dilute the uninsured motorist coverage mandated by K.S.A. 40-284. (*Barnett v. Crosby*, 5 Kan.App.2d 98, 1980.)

C. STACKING OF COVERAGES

Prior to 1981, the Supreme Court also addressed the issue of "stacking" uninsured motorist policies. First, the Supreme Court held that where the injured insured had two separate policies of uninsured motorist insurance on each of two motor vehicles owned by the insured that the injured insured could "stack" the uninsured motorist coverage of the two separate policies up to the limit of his damages. (*Van Hooser v. Farmers*, supra, 597; *Simpson v. Farmers Ins. Co.*, 225 Kan. 508, 511-12.) Then, the court also held that where two vehicles are insured in a single policy with separate premium paid for each vehicle, an injured insured may also "stack" the two uninsured motorist coverages up to the limit of his damages and that a policy provision purporting to prevent such "stacking" was void and unenforceable. (*Davis v. Hughes*, 229 Kan. 91, 622 P.2d 641 (1980)).

D. "OWNED AUTO" or HOUSEHOLD EXCLUSION
(H.B. 2081, Lines 21-25)

House Bill No. 2081 attempts to reduce current coverage of uninsured and underinsured motorist policies by excluding coverage when the insured is occupying or struck by a vehicle which is owned by or provided for the insured's regular use unless the vehicle is insured under the policy in question --

> (e) Any insurer may provide for the exclusion or limitation of coverage:
>
> (1) a motor vehicle owned by or provided for the insured's regular use, if such motor vehicle is not described in the policy under which the claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of the policy under which the claim is made;
> (H.B. 2081, Page 2, lines 21-25)

This is called the "OWNED AUTO" or HOUSEHOLD EXCLUSION. This is an attempt to overturn the Kansas Supreme Court case of *Farmers Insurance Company, Inc. v. Gilbert*, 247 Kan. 589, 802 P.2d 556 1990) which affirmed the Kansas Court of Appeals decision in *Farmers Insurance Company, Inc. v. Gilbert*, 14 Kan.App.2d 395 (1990) disallowing the "household exclusion." "*Gilbert*," however, was not new law. The insurance industry had attempted to inject a "household exclusion" in policies as early as 1973 and 1979; and the Kansas Supreme Court rejected those attempts in *Forrester v. State Farm Mutual Automobile Ins. Co.*, 213 Kan. 442, 517 P.2d 173 (1973), and in *Midwest Mutual Ins. Co. v. Farmers Ins. Co.*, 3 Kan.App.2d 630; 599 P.2d 1021 (1979) at p. 631.

Current law allows exclusion of coverage if an insured is occupying or struck by an uninsured motor vehicle owned by or furnished for the regular use of the insured in order to enforce the law which requires that each vehicle be insured, but does not require each automobile to be insured under the same policy. All that is required is that all vehicles be insured. For 21 years, Kansas citizens have successfully resisted an "owned auto" or "household exclusion" and have paid a premium for and received uninsured motorist coverage from their policy of insurance with the highest limits of uninsured motorist coverage.

The Kansas insurance industry has not limited its attempts to obtain an "owned auto or household exclusion" to the courts. It lost an earlier attempt to introduce a "household exclusion" and change long-standing Kansas law when an identical proposed change

was presented to the 1991 Legislature in House Bill 2138. At that time, Kansas elected to remain among the 34 states which prohibit the household exclusion --Alabama, Arizona, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Kansas continues to allow the insured to choose coverage under the available insurance policies with the highest limits.

KTLA believes this valuable coverage should remain unchanged on the grounds consumers have paid the premium for the policy coverage for the past four decades and should be allowed to continue to make claims on those policies.

E. CONCLUSION

Insurance companies honored the 1981 compromise between the insurance industry and the Kansas Trial Lawyers Association by writing policies with provisions such as that of State Farm Mutual Automobile Insurance Company following the language of K.S.A. 40-284 (e)(1) to the letter and only excluded "uninsured" motor vehicles:

> THERE IS NO COVERAGE:
>
> 2. For bodily injury sustained by an insured when occupying or struck by a motor vehicle or trailer:
>
> a. Owned by you, or
> b. Furnished for your regular use
> and which is not insured.
> (State Farm Mut. Auto. Ins. Co. Policy Form 9816.6)

thus providing coverage to insureds for all injuries sustained in other insured vehicles and while pedestrians up to the limits of the highest policy and denying coverage under K.S.A. 40-284(e)(1) to those who violate the law and do not obtain insurance on vehicles.

Insurance companies honored the commitment to extend the highest limits of any policy to an injured insured by writing provisions such as that of Farmers Insurance Group, which stated:

> Other Insurance
>
> 4. If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.
>
> . . .
>
> 6. Two or More Cars Insured
>
> With respect to any accident or occurrence to which this and any other auto policy issued to you by any member company of the Farmers Insurance Group of Companies applies, the total limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

which incorporated the language and meaning of the anti-stacking compromise, and allows coverage under the policy with the highest limits.

The passage of the 1981 amendment to K.S.A. 40-284 was totally dependent upon the specific compromise between KTLA and the insurance industry, resulting in subsection (d) to allow a limited anti-stacking provision, and in exchange, the insurance industry agreed to preserve the right of the insured to recover

the highest UM/UIM limit on any of his or her vehicles. For the insurance industry to now attempt to seek law under which an insured is limited to collecting UM or UIM benefits on the lower limits of the vehicle being occupied is to break the promise to allow recovery on "the highest limits of any single applicable policy" and must be disallowed. Premiums are based upon the coverage that Kansans have been purchasing for 40 years, and the 1991 compromise must not be discarded by the passage of time.

The Kansas Trial Lawyers Association respectfully requests that House Bill No. 2081 be disapproved by this committee.

Prepared and submitted by:

Gerald W. Scott
on behalf of the
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APPENDIX A

1981 AMENDMENTS AND ADDITIONS TO K.S.A. 40-284

In 1981, the Kansas Trial Lawyers Association (KTLA) drafted and submitted proposed legislation in response to these problem areas to:

1. Raise liability limits of K.S.A. 40-3107 from $15,000/30,000 to $25,000/50,000;

2. Introduce underinsured motorist coverage into Kansas law; and

3. Make mandatory the offering of uninsured motorist and underinsured motorist coverage in limits equal to the liability limits.

The first KTLA objective was submitted as Senate Bill 371 and the second and third objectives were submitted as House Bill 2251. A review of these bills introduced on behalf of KTLA reveals the legislative history of Senate Bill 371 which eventually amended K.S.A. 40-284 and K.S.A. 40-3107.

The original draft of Senate Bill No. 381, By Committee on Judiciary, "Draft 1" sought to raise K.S.A. 40-3107 limits of liability from 15/30/5 to 25/50/10.

The second draft of Senate Bill No. 371 [As Amended by Senate on Final Action], "Draft 2," amended S.B. 371 adding the KTLA proposed changes to K.S.A. 40-284 by mandating the offer of underinsured motorist coverage equal to the liability limits and included anti-stacking amendments as presently set out in K.S.A. 40-284(d), but was not broken down in subsections.

This second draft of Senate Bill No. 371, was a compromise between the Kansas Trial Lawyers Association and the insurance

lobbyists giving KTLA their sought-after changes and giving the insurance industry lobbyists the anti-stacking amendment they sought. By compromise between KTLA and the insurance industry lobbyists, S.B. 371 now contained anti-stacking language:

> "Coverage under the policy shall be limited to the extent that the total limits available cannot exceed the highest limits of any single applicable policy, regardless of the number of policies involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid or vehicles involved." (S.B. 371, Draft #2, S.B. 371) [As Amended by Senate on Final Action.]

and the insurance industry agreed to allow Uninsured/underinsured motorist coverage to apply no matter where the named insured is or what vehicle the named insured is occupying when the named insured is injured, so long as the vehicle was insured under a current policy. The insured could only collect on one policy, but could collect from the policy with the highest limits.

The third draft of S.B. 371, As Amended by House Committee, "Draft 3," contained the same elements but broke K.S.A. 40-284 into sections (a), (b), (c), and (d) as it exists today.

The final Senate Bill No. 371, [As Amended by House Committee of the Whole], "Draft 4," contains an amendment presented by Rep. Hoy on the House Floor. S.B. 371 as amended by the House Committee of the Whole was then passed by the Senate and signed into law by Governor Carlin.