Approved: March 6, 2001
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 3:30 p.m. on February 6, 2001 in Room 527-S of the Capitol.

All members were present except:	Representative David Huff
Committee staff present:	Bill Wolff, Legislative Research Ken Wilke, Legislative Revisor Mary Best, Committee Secretary
Conferees appearing before the committee:	Mr. Lee Wright, Farmers Insurance Mr. Bren Abbott, Law Office of Ken Berra Mr. Ken Davis, American Family Insurance Mr. James Benfer, Kansas AFL-CIO Mr. John Parisi, Kansas Trial Lawyers Mr. Paul Davis, Kansas Bar Association Mr. Jerry Slaughter, Kansas Bar Association
Others attending:	See Attached Guest List

The meeting was called to order by recognizing Mr. Jerry Slaughter, Kansas Medical Association. Mr. Slaughter offered an Amendment to **HB 2115**. A copy of the Amendment is (Attachment #1) attached hereto and incorporated into the Minutes by reference. The proposal would change K.S.A. 40-3003(a)(1) by including the phrase "or providers." This would eliminate any arguments the Guaranty Association and their legal staff has or may put forth that the provider claimants still remain outside of the category of claimants as persons covered under K.S.A. 40-3003. Representative Grant made the motion to adopt the amendment and Representative McCreary seconded the motion. Motion carried. Representative Edmonds abstained from voting. Representative Mayans moved to pass the bill out as amended, with Representative Sharp seconding the motion. The motion carried.

With this business concluded the Chairman called upon Revisor Ken Wilke to give an overview of **HB 2196** - Enacting the Personal Responsibility Act of 2001, (1994 Calif). Section 2 sets out that a felon cannot recover for damages and Section 3 is similar, when there is no insurance when a third party is driving another parties uninsured vehicle.

Mr. Lee Wright, Farmer's Insurance, was the first Proponent to give testimony to the committee. A copy of the testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference. Mr. Wright stated that the bill, often referred to as "no pay, no play," is fashioned after California as stated previously by Mr. Wilke. Similar laws have been passed in four other states. He stated to the committee that the law is really very simple. If you are an uninsured driver, not at fault in an accident, you may recover for property damage, medical expenses and loss of wages, but not punitive damages. In other words, you can get your car repaired or replaced, your medical and wages reimbursed, but you cannot collect for pain and suffering. You may not profit from someone else's policy. This type of bill passed in California and is upheld California Supreme Court. Mr. Wright stood for questions. There were none.

Mr. Bren Abbott, Law offices of Kenneth J. Berra, was the next conferee to come before the committee. Mr. Abbott presented Proponent Testimony, of which a copy is (Attachment #3) attached hereto and incorporated into the Minutes by reference. Mr. Abbott confirmed what was previously testified to and went more in depth on the contents of the bill, stating the bill was "designed to apply in very limited situations," and laid out four of these situations. He then laid out three reasons a injured person could not recover non-pecuniary damages. He also noted that "immunity" is not granted to the guilty party. The clear meaning of the statute does not affect innocent people. Mr. Abbott completed his testimony and stood for questions.

Questions were fielded from Representatives Boston, Vickery, Mayans, Hummerickhouse, Kirk, Ostmeyer, Grant, Huy, Toelkes, Sharp, O'Brien, McCreary, and Chairman Tomlinson. The questions covered actuaries writing policies for people under drugs or alcohol, lapse of renewal of policy, broad spectrum of the bill, who pays, people who have always been responsible now on limited incomes should be looked at differently with today's economy.

Mr. Kevin Davis, American Family Insurance, was the last Proponent to offer testimony. A copy of the testimony is (Attachment #4) attached hereto and incorporated into the Minutes by reference. Mr. Davis confirmed the previous testimony. Questions were asked by Representatives Boston, Grant, Kirk, Mayans, and Boston. There was a question concerning the bottom line savings to insurance companies. The response 5%.

This concluded the Proponent Testimony therefore, the Chairman recognized Mr. James Benfer, Kansas AFL-CIO. Mr. Benfer gave Opponent Testimony to the committee and a copy of his testimony is (Attachment #5) attached hereto and incorporated into the Minutes by reference. Mr. Benfer informed the committee that the reason he opposes the bill is "intended to be a limitation on the right to sue for damages of certain classes of individuals. Mr. Benfer spoke to the referral in the bill barring recovery for damages from pain, suffering physical impairment, and disfigurement. He gave three examples of this happening. Mr. Benfer felt the legislation "would insulate liability carriers based on circumstances of the accident totally unrelated to the concept of "fault", taking the rights of innocent persons, free from fault .....in the name of responsibility." The AFL-CIO does not feel this is legislation about "personal responsibility" but rather limiting "corporate responsibility." Mr. Benfer stood for questions. Questions were asked by Representatives Kirk, Huff, and Boston.

Mr. John Parisi, Kansas Trial Lawyers Association, was next to give Opponent Testimony to the committee. A copy of the written testimony is (Attachment # 6) attached hereto and incorporated into the Minutes by reference. Mr. Parisi also feels the legislation is targeted at the wrong people. While he does support the mandates for Kansas drivers to be insured, and that uninsured drivers should be addressed, he does not feel this is the legislation to do this, and that innocent individuals should not be denied right to recovery.

Mr. Parisi informed the committee that "In effect, HB 2196 rewards negligent drivers by statutorily immunizing their negligence by eliminating non-economic damages if they injure or kill an uninsured driver or the owner of an uninsured vehicle. The feeling is that the message is sent to the guilty driver that it ok to be negligent when you injure, kill or do damage to the property of an uninsured person because they had no insurance and their losses nor the losses of their families are of any consequence. This kind of responsibility is addressed under the Kansas comparative fault doctrine. Both parties cause the plaintiff's injuries and a jury determines the portion of fault for each." If the plaintiff is found to be 50% guilty, there is no recovery. They feel that this bill will eliminate comparative negligence as it is known now.

Mr. Parisi feels there are many Kansans are struggling to stay afloat financially now. These same people are hard working individuals who should not be subject to financial ruin if they are not at fault for an accident and have no way to recover, driving them into even more ruin and the need to make decisions which would even further jeopardize their families. He stated that "there is no evidence showing that everyone who doesn't purchase care insurance does so arrogantly, and without regard for the law." Mr. Parisi continued on to give more examples of where a negligent or reckless driver will not be held accountable for damages, injuries or deaths of innocent people. Mr. Parisi stood for questions. Chairman Tomlinson was the only member to present questions.

The last conferee to come before the committee was Mr. Paul Davis, Kansas Bar Association. Mr. Davis gave Opponent Testimony and a copy of the testimony is (Attachment # 7) attached hereto and incorporated into the Minutes by reference. Mr. Davis confirmed that the bill would eliminate comparative negligence system as we know it today. Mr. Davis stated that his members are from both plaintiff and defense sides when it comes to defending these matters and feel the same as well as represents bad public policy. Mr. Davis also gave several examples of the innocent people being punished by not being able to collect for non-economic damages for medical injuries. Mr. Davis went through the Sections and what consequences would be suffered with these changes.

Mr. Davis also spoke of the jury system and that is what the system is set up for. He spoke to the committee about how this creates more felonies to the already growing list of new felonies. He gave a scenario of where he had been drinking, decided to go out and move his car into his driveway. He explained when he sits in the car, puts the key in the ignition he is driving under the influence. As he is doing this a driver who fell asleep behind the wheel of a car veers into his yard and hits him. While the alcohol did not have a casual relationship with the accident, the way this bill is written, he would be barred from non-economic compensation for damages and the other driver is off the hook and takes no responsibility. Mr. Davis gave a few more examples to the bill and concluded his testimony. Mr. Davis stood for questions.

There were no further questions and the meeting was adjourned. The time was 5:15 p.m.

The next meeting will be held February 8th.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: Feb 6, 2001

NAME	REPRESENTING
James C. "Jeb" Benfer III	Kansas AFL-CIO
Wayne Maichel	" "
MIKE LARKIN	KS EMPLOYER COALITION ON HEALTH
Kevin Davis	Am Family Ins.
Vern Elliott	Farmers Ins Co
Lee Wright	Farmers Ins. Group
John PARISI	Shamberg Johnson + Bergman / KTLA
Julie Numrich	Federico Consulting
Jeremy Anderson	KS Ins Dept.
Linda DeCoursey	KS Ins Dept.
B.H. Sneed	State Farm
[illegible]	[illegible]
Tom Bell [redacted]	KHA
Paul Davis	KS Bar Assn.
Carol McDowell	Delta Dental
Chris Collins	Ks Medical Society
[illegible]	KS Trial Lawyers
Barb Conrad	KTLA
Mary Ellen Conlee	~~KS~~ Via Christi Reg. Medical Center
Alene M. Isabell	Cottonwood Inc.
Jamie Ann Rowe	KAHP
Anne Spiess	KAIFA

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
Marsha Strahm	CWA of KS
LARRY MAGILL	KAIA

KMS
KANSAS MEDICAL SOCIETY

February 5, 2001

The Honorable Bob Tomlinson, Chairman
House Insurance Committee
State Capitol Building, Room 303-N
Topeka, Kansas 66619

***Re:* HB 2115**

Dear Chairman Tomlinson:

On February 1, 2001, your Committee held the public hearing on HB 2115. Shortly before the commencement of that hearing, you received a facsimile transmission from an attorney representing the Kansas Life and Health Insurance Guaranty Association (the "Guaranty Association"). The Guaranty Association, which took no position on the bill, raised two issues in its letter to your Committee. After the hearing, Tom Bell of the Kansas Hospital Association and I discussed those issues with counsel, and felt that a brief response might be appropriate and helpful to your committee prior to the bill being worked on Tuesday.

In a nutshell, the Guaranty Association raises two issues: (l) does the new language in HB 2115 found on page 9, 1. 14-16, create retroactive application, and if so, is such application constitutional?; and (2) does the inclusion of "provider" found on page 2, l. 32 (and further defined on that same page at l. 13-l 8) conflict with K.S.A. 40-3003?

Retroactive Application

During the development of this bill we had this legislation analyzed by two different law firms, both of which have concurred that the amendment, if retroactive, would indeed be constitutional under current Kansas case law. First, both firms believe that the amendment is not retroactive inasmuch as the Heartland liquidation has not concluded, and no final rights have been "vested." However, if a court were to accept an argument that this legislation has retroactive application, it is well established that the Legislature may retroactively apply curative and expository legislation to substantive laws to interpret, clarify and explain earlier legislation.

Conflict in Statutory Provisions

The attorney for the Guaranty Association has also raised the issue of whether the amendments are clear enough as they relate to K.S.A. 40-3003. Although we contend that it is eminently clear what is being covered by the Legislature, in order to avoid any potential argument in the future, I am enclosing a copy of a proposed amendment which we would request that your Committee consider. The proposed amendment would change K.S.A. 40-3003(a)(1) by including the phrase "or providers," thus eliminating the argument that the attorney for the

623 SW 10th Ave. • Topeka KS 66612-1627 • 785.235.2383 • 800.332.0156 • FAX 785.235.5114
Western Kansas office • 108 E 12th St. • Hays KS 67601 • 785.625.8215 • 800.293.2363 • FAX 785.625.8234

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Guaranty Association has put forth that such provider claimants would still remain outside the category of claimants who are covered persons under K.S.A. 40-3003.

We appreciate the opportunity to respond to the issues raised by the Guaranty Association, and I will be happy to discuss this with you or the Committee at any time.

Sincerely yours,

Jerry Slaughter
Executive Director

KMS Amendment to HB 2115
02.05.01

40-3003. Persons provided coverage; policies and contracts specified. (a) This act shall provide coverage, for the policies and contracts specified in subsection (b), for:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, ~~or~~ payees **or providers** of the persons covered under paragraph (2); and

(2) persons who are owners of or certificate holders under such policies or contracts, and who:

(A) Are residents;

(B) are not residents, but only with respect to an annuity contract awarded pursuant to K.S.A. 60-3407 or 60-3409 , and
amendments thereto, an annuity contract for future economic loss procured pursuant to a settlement agreement in a medical
malpractice liability action, as defined by K.S.A. 60-3401, and amendments thereto, or fixed-return accounts of the Kansas public
employees deferred compensation plan under K.S.A. 75-5521 through 75-5529a, and amendments thereto; or

(C) are not residents, but only under all of the following conditions:

(i) The insurers which issued such policies or contracts are domiciled in this state;

(ii) such insurers never had a license or certificate of authority in the states in which such persons reside;

(iii) such states have associations similar to the association created by this act; and

(iv) such persons are not eligible for coverage by such associations.

(b) This act shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, health, annuity and supplemental policies or contracts, unallocated annuity contracts covering individuals participating in a governmental deferred compensation plan established under section 457 of the U.S. internal revenue code pursuant to K.S.A. 75-5521 through 75-5529a, and amendments thereto, whether or not a resident, or the beneficiaries of each such individual if deceased, and for certificates under direct group policies and contracts issued by member insurers, except as limited by this act.

Testimony on House Bill 2196
by Lee Wright
Farmers Insurance Group
February 6, 2001

Mr. Chairman and members of the Committee. My name is Lee Wright and I am representing Farmers Insurance Group. We appreciate this opportunity to appear in support of HB 2196, the Personal Responsibility Act of 2001.

The Personal Responsibility Act of 2001 is fashioned after the California law often referred to as "No Pay – No Play."

The basic concept is pretty simple. If an uninsured driver is not at fault in an accident, they are restricted to recovering economic damages only for claims such as medical expenses, lost wages and property damage. The uninsured driver is not eligible to receive compensation for pain and suffering.

The concept originated in California with California Public Initiative Proposition 213. It was approved by the voters in 1994 and subsequently upheld by the California Supreme Court. Similar laws have been passed in Michigan, Louisiana, Oregon and New Jersey.

Farmers believes the No Pay – No Play concept has significant appeal to much of the general public as evidenced by the California public initiative vote and we support HB 2196.

We do also realize the concept would create a change in public policy and therefore must be carefully considered by the legislature.

Thank you.

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HOUSE INSURANCE COMMITTEE
HOUSE BILL No. 2196
TESTIMONY BY BREN ABBOTT
LAW OFFICES OF KENNETH J. BERRA

The "personal responsibility act of 2001" is designed to apply in very limited situations:

1. when a person is injured by his or her commission of any felony, or immediate flight therefrom, and that person is convicted of that felony;

2. when a person who is operating a motor vehicle while under the influence of alcohol is injured and the person is subsequently convicted of said offence;

3. when a person who is injured is subsequently convicted of vehicular homicide or involuntary manslaughter while driving under the influence; and,

4. when a person who is the owner or operator of an uninsured motor vehicle is injured in an accident.

The provision involving a situation where a plaintiff is injured during the commission of a felony or immediate flight from a felony applies to all negligence situations. An example would be where an individual is injured while attempting to rob a convenience store. The injury could result from any negligent act such as a slip and fall on a wet substance. Under the current law, the robber could sue if he or she believes that the store was negligent. If the robber is subsequently convicted of a felony, the proposed law prohibits the felon from bringing a personal injury action for injuries arising out of the felony.

In an action to recover damages arising out of the operation or use of a motor vehicle, an injured person cannot recover nonpecuniary damages if:

a. the injured person was at the time of the accident operating a motor vehicle in violation of the driving under the influence statutes or in violation of the vehicular homicide statute and was convicted of such offense(s);

b. the injured person was the owner of a motor vehicle involved in the accident and the motor vehicle was not insured as required by the financial responsibility laws of Kansas;

c. the injured person was the operator of a motor vehicle involved in the accident and such operator cannot establish such operator's financial responsibility as required by the financial responsibility laws.

In the non-felony situation, it is important to realize that the Act does not eliminate recovery - it only prohibits compensation for pain, suffering, inconvenience, physical impairment, and disfigurement. It still allows recovery for the reasonable expenses of necessary medical care,

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hospitalization and treatment received and those reasonably expected to be needed in the future, loss of time or income, and property damage. As a consequence, "immunity" is not granted to the negligent party.

It also should be noted that this statute does not apply to persons that were injured due to the negligence of some one that is driving intoxicated, driving without insurance, or operating the vehicle during the commission of a felony unless the injured person was also driving while intoxicated, driving without insurance, or operating the motor vehicle during the commission of a felony.

It has been argued that Section 2 could be interpreted to mean that a passenger, pedestrian, or occupant of <u>any</u> vehicle struck by a felon in flight could potentially lose his or her claim. I suggest that the clear meaning of Section 2 is to the contrary. The Act specifically limits this provision to the situation where the injured person's (plaintiff) injuries were caused by the injured person's commission of a felony or immediate flight therefrom. The clear meaning of the statute does not affect an innocent person.

Section 3(b) provides that an insurer shall not be liable under an insurance policy to indemnify for noneconomic losses of a person injured while operating an automobile under the influence of alcohol or operating an uninsured vehicle. This provision does not affect "innocent persons." Rather, this provision is applicable only to those who operate the vehicle under the influence of alcohol or those who operate an uninsured vehicle. If you were struck and injured by some one, you are entitled to complete recovery unless you are uninsured or you are operating your vehicle under the influence of alcohol. Even if you are operating your vehicle under the influence of alcohol or operating an uninsured vehicle and become injured in an accident, you are still allowed to recover your past and future medical expenses, lost wages, and property damages.

I have also heard that there is a concern about college students that have driver licenses but do not own a car. What happens when they borrow a car that is not insured? First, it should be noted that most college students qualify as a insured under their parents insurance. Second, the burden of making sure the car is insured should be on the person borrowing the vehicle.

I have been asked why I believe this Bill is good public policy. My answer is as simple as the bill itself - "personal responsibility." Today's drivers know that it is illegal to operate a vehicle under the influence of alcohol and that it is illegal to operate a vehicle without insurance. Yet, I see these events occurring on a daily basis. This Act is one more way to create the incentive for people to fulfill their personal responsibilities to maintain automobile insurance, not to operate a motor vehicle under the influence of alcohol, and to refrain from committing a felony.

I do not see this Bill as an "insurance bill," but rather a Bill involving personal responsibility. Any incentives for an individual to fulfill the legal requirements of maintaining insurance and not to operate a motor vehicle after drinking are good incentives. I probably spend close to 50% of my law practice defending uninsured motorist claims. I see on a daily basis the devastation that is caused when people elect to operate uninsured motor vehicles or to operate vehicles under the influence of alcohol. Telling a driver that they cannot sue for pain and suffering unless they are willing to insure their vehicle is good public policy. Telling a drunk driver that they cannot

sue for pain and suffering is just plain smart.

Please support House Bill 2196.

American Family Insurance Group
1300 SW Arrowhead Road
PO Box 4384
Topeka, Kansas 66604-0384
Phone (785) 273-5120

AMERICAN FAMILY INSURANCE®

Kevin R. Davis
Government Affairs Counsel

February 6, 2001

To: Representative Robert Tomlinson and

The House Insurance Committee

From: Kevin R. Davis

Subject: Kansas House Bill 2196

I am here today to support HB 2196, the Personal Responsibility Act of 2001. My comments primarily deal with Section 3 of the bill regarding uninsured motor vehicle accidents. However, I also support Section 2 dealing with injuries incurred in the commission or fleeing from a felony and the other parts of the bill.

This bill is modeled after the California initiative and there are laws and legislation of this nature occurring all over the country as states try to deal with the problem of the uninsured motorist and those abusing the driving privilege. These laws are often referred to as "no pay-no play" laws. That is, if an owner of a motor vehicle who is required to have liability insurance coverage is uninsured, they are not eligible to participate in that part of the tort system which allows for collection of non-economic damages. Some laws have also excluded the right to make collection of damages for actual damages, such as medical expenses and lost wages. This is a true "no pay-no play" system. Under this bill all injured parties are still able to collect for their actual or economic damages.

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This bill is but another piece of the puzzle in trying to reduce the number of uninsured drivers in Kansas. We have laws on the books to fine, restrict the license, and punish uninsured drivers, but they are hard to enforce and some courts are reluctant to enforce these violations to the full extent of the law. As you may recall, two years ago Representative Huff introduced, and the Legislature passed, a bill which required proof of insurance when registering a motor vehicle. This was a good step. This bill is the next set step in the process of addressing the uninsured issue. From a legislative point of view this bill has the appeal that it will cost the public and the state nothing to enforce or implement. The only people who are disadvantaged are those breaking the law by committing a felony, driving while impaired and those failing to purchase mandatory insurance coverage. The intent is to motivate the uninsured to purchase insurance in order to be able to fully participate in the all of the recovery allowed by Kansas law. Hopefully, this bill will reduce the number of uninsured drivers and potentially help decrease or slow down the increase in the cost of uninsured motorist coverage. Its the fair thing to do, personal responsibility.

We request your approval of HB 2196.

COMMENTS TO H.B. 2196

TO: Committee on Insurance

FROM: James E. Benfer, III on behalf of the Kansas AFL-CIO

RE: House Bill 2196

DATE: February 6, 2001

On behalf of the Kansas AFL-CIO, we have reviewed the proposed bill and want to go on record in opposition to the legislation. The legislation in question is intended to be a limitation on the right to sue for damages of certain classes of individuals. While the legislation attempts to define the group of persons whose rights would be limited, there are clearly many unintended victims.

At first glance the proposed bill takes away the right to make claim for non pecuniary damages of certain wrongdoers. Persons included are persons who are injured in the commission of or flight from the commission of a felony, those who are injured arising out of their operation of vehicle while under the influence, including unintentional killing of another due to recklessness or driving under the influence of alcohol or drugs.

In theory, under the bill a felon injured while in flight could not sue for damages for injuries received at the hands of a third party. As such a fleeing felon hurt in car accident gets no recovery against person causing the injury because of felony exclusion. Does this create absolute immunity for police misconduct causing personal injury during pursuit and arrest of felons?

Of greater concern to the Kansas AFL-CIO is Sec. 2. which strips the injured person of fundamental rights to recover damages for pain, suffering, physical impairment, and disfigurement under three circumstances.

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In subsection (1) where the person is convicted of reckless driving or where the person is convicted of operating under the influence, the injured person loses key rights to recover damages. I would respectfully submit traditional negligence law takes care of this issue quite effectively. In Kansas, we follow what is referred to as "modified comparative fault" principles in determining one's right to recover. We "compare the fault" of the parties to an accident and if a plaintiff claiming damages is found to be 50% or more at fault in causing the accident, their recovery is barred as a matter of law. (See K.S.A. 60-258a)

Rarely is someone found to be a reckless driver going to convince a jury their fault was less than 50%. However, there are potential unfair results for persons who may be convicted of operating under the influence.

Imagine your self driving home from a day of golf, followed by dinner and drinks with friends. As you drive along at about the posted speed, in your own lane of traffic, a speeding car suddenly comes through a stop sign striking the drivers side door. Hours later you wake up in the hospital, your left arm is gone, amputated by the surgeons because it was irreparably crushed. Under this legislation, your right to ask a jury for the loss of your arm, the pain you suffered in the accident, the emotional issues surrounding the loss of your arm and everything you cannot do because of its amputation, may be determined by your blood alcohol content, not whether or not you were "negligent" in the way you were operating your car at the time of the accident. Is this how you want your rights determined? It is certainly in direct conflict with current comparative fault principles.

In subsection (2), you lose your right to claim these previously discussed damages, if the car you are driving is not insured. Immediately, I think of problems surrounding borrowed cars, bills that haven't been paid by a spouse or partner, or of more concern to the Kansas AFL-CIO, a person's temporary inability to pay their insurance premiums.

As most of you know injured workers do not always automatically get their weekly benefits paid. Frequently, an injured worker has to go to a preliminary hearing to get an enforcement order to secure their rights under the Kansas Workers Compensation Act. Even when they do get paid, the rate is 2/3 of their weekly wage up to the maximum weekly wage rate which is 2/3 of the state wide average weekly wage rate. Many skilled laborers find themselves trying to get by on less than ½ of their pre-accident earnings. For most of us, when faced with prioritizing payments to creditors, car insurance clearly comes after housing and food costs.

Is it fair that an temporarily unemployed injured worker who has no funds to pay his car insurance premium, lose his rights to recover against a negligent third party causing him injury? On behalf of the Kansas AFL-CIO, we respectfully submit that this legislation is unfair, and works a potentially hardship on injured workers, further compromising their rights post accident.

In subsection (3), there are many people who simply do not own vehicles. As such, they have no need for car insurance. Under subsection (3), their lack of insurance bars their claims for the types of damages we have previously discussed.

Finally, in subsection (3) (b) we find the most troublesome aspect of these bill. In this section, a new limitation on coverage is proposed which, if passed, would have the effect of creating new exclusions to statutorily mandated automobile insurance coverage. The obvious beneficiary of this proposed legislation is the liability insurance industry. The legislation would insulate liability carriers based on circumstances of the accident totally unrelated to the concept of "fault". The rights of innocent persons, free from fault in the causation of injuries will be sacrificed in the name of "personal responsibility". The Kansas AFL-CIO respectfully submits that this legislation is not about "personal responsibility", its sole purpose is to limit the "corporate responsibility" of the insurance industry.

We oppose this bill and ask you to carefully consider the matter. Thank you

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

Feb. 6, 2001

TO: Members of the House Committee on Insurance

FROM: John Parisi
Vice President for Legislation

RE: 2001 HB 2196

Chairman Tomlinson and members of the House Committee on Insurance, my name is John Parisi. I practice law in Overland Park and am currently Vice President for legislation for the Kansas Trial Lawyers Association. On behalf of KTLA, I appreciate the opportunity to comment on House Bill 2196.

Although we understand the intent of this bill is to encourage car owners to carry car insurance, which is a reasonable and laudable goal, we believe that the approach the bill takes is misguided and will result in innocent Kansans being denied compensation and allow reckless drivers to avoid the consequences of their actions. The defect in HB 2196 is that it confuses two very separate problems:

First problem: Uninsured drivers. KTLA agrees with and supports mandatory insurance for Kansas drivers. We also agree that the problem of uninsured drivers should be addressed and that Kansas car owners must be continually reminded that they are not only responsible but also statutorily required to carry car insurance. Currently, there is no process in Kansas to track drivers who do not have car insurance until they are stopped for a traffic violation. Although KTLA agrees with the goal of encouraging compliance with Kansas compulsory insurance law, we believe that this problem can best be solved not by denying innocent individuals recovery, but by educating Kansas drivers about the requirements of the law and providing a means of tracking uninsured drivers to bring them back into compliance before there is an accident.

Second problem: Negligent, reckless and drunk drivers. KTLA also agrees that negligent and reckless driving is a very serious issue that must be monitored and addressed. All Kansas drivers must continue to receive the message that they will face severe consequences if their negligent or reckless behavior harms or injures another. However, rather than delivering this critical message, the provisions in HB 2196 will actually grant immunity to negligent or reckless drivers if the people they injure are in a car that is not insured.

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Attachment #6

Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.232.7756 • Fax 785.232.7730

E-Mail: triallaw @ ink.org

In effect, HB2196 rewards the negligent driver by statutorily immunizing their negligence by eliminating non-economic damages if they injure or kill an uninsured driver or the owner of an uninsured vehicle. The lack of insurance of the innocent victim should not preclude reckless driver from bearing responsibility for the injuries they have caused. The message sent to negligent drivers in HB 2196 is that you avoid the financial consequences of your negligence if you have the good fortune of hitting an uninsured Kansan. KTLA does not believe this message to Kansas drivers is good public policy.

If our goal is to encourage compliance with Kansas law, wouldn't it be more effective to continue to educate Kansas drivers about the law, track and identify uninsured drivers and then communicate with them to bring them back into compliance **before** there is an accident. Insurance companies know who is not paying. They already notify the owner and the lien holder of the car that coverage has, or is about to, expire. They could also, at that time, notify the State that a driver is out of compliance with the law and the State could then take appropriate action to enforce the law.

Our civil justice system is based on the premise that all individuals are responsible for their own actions. Under Kansas law, personal accountability is directly addressed under the Kansas comparative fault doctrine. Based on this longstanding doctrine, if the actions of both the plaintiff and the defendant contribute to cause the plaintiff's injury, a jury determines the percentage of "fault" for each. For example, if the plaintiff's action contributed 30% to the injury and the defendant is 70% responsible, then damages for the plaintiff are reduced by 30%. Moreover, if the plaintiff is found by a jury to be 50% responsible for their injury, there is no recovery. We believe that H.B. 2196 will undermine the current comparative negligence system, by eliminating a reckless driver's liability, even though the plaintiff may be only minimally at fault.

The Kansans who are ultimately impacted the most by this proposed legislation will **not** be those who are negligent or behave recklessly. It will be the accident victims who, for whatever reason, have not purchased or renewed their car insurance. Many will likely be the elderly, young adults, unemployed Kansans or members of the working poor. There is no evidence showing that everyone who doesn't purchase car insurance does so arrogantly, and without regard for the law.

However, we do know that many Kansans are struggling to stay afloat financially. These individuals whom are working hard to raise their families and make ends meet should not be subject to financial ruin if they are not at fault for an accident, but for whatever reason are not insured. Many of these Kansans buy car insurance on a monthly basis. They may, in a particular month, opt to pay an extraordinarily high heating bill instead of their car insurance premium. Late child support payments may force working mothers to prioritize their monthly bills and choose to pay their health insurance premium instead of their car insurance premium. If they were hit by a drunk driver on the way to make the car insurance payment under this bill they would not be able to fully recover for their injuries.

There are numerous other examples of where because of this bill a negligent or reckless driver would escape accountability for their actions:

- Many farmers do not insure some vehicles that are just used around the farm. For example: a truck only used to feed cattle and in the field and only occasionally driven across a road between fields. Under this act, if a drunk driver who hits the farmer in that uninsured truck as he crosses the road to do chores, the reckless driver would not be responsible for the non-economic damages.
- If a married couple separates and the husband does not pay the car insurance premium as called for in a separation agreement, the wife would be left without full compensation if the wife is hit by a reckless driver. Under this bill she would be denied compensation for her injuries even though she did not know her coverage had lapsed.
- Workers who are laid off from their job often have to make tough choices about what bills to pay. If they simply have no money to pay the car insurance and on their way to a job interview, are injured by a reckless driver, under this bill the reckless driver is not accountable.
- These scenarios do not take into account situations where a premium notice is lost in the mail, or goes to the wrong address, or is late in being sent.
- This bill would also have the effect of precluding an uninsured person from taking legal action against an automobile manufacturer for injuries caused by a defect in the vehicle. The owner of a Ford Explorer that forgot to pay the insurance bill would be unable to recover for non-economic damages for a tire failure or rollover accident.

The insurance companies are the real beneficiaries of this legislation. The bill allows insurance companies to avoid their contractual responsibility to their insured by avoiding payment for harm caused by their insured. They have collected premiums from the negligent driver who expects to be covered for his damages and those he causes if involved in an accident. When a person buys liability insurance they do so to pay for the harm they may cause when they do not drive reasonably. This bill allows the insurance company to avoid paying for their insured's moral and legal responsibility. If I hurt someone, I want them to be taken are of. That is why you and I buy liability insurance. Under this bill, the insurance company would not pay for the injuries or damages of either party.

KTLA strongly opposes HB 2196. As documented above, HB 2196 denies compensation to persons who are not at fault for an accident. The uninsured motorist is arbitrarily denied non-economic damages without regard to the facts of the case. The insurance company profits from the premium dollars that were collected but not paid on behalf of the insured to those he injured.

KTLA agrees that the problems of negligent drivers and uninsured drivers deserve serious and thoughtful consideration. However these separate and distinct issues should be dealt with separately. Mixing them together, as in HB 2196, will result in the unintended and unfair consequences addressed above.

Thank you, Mr. Chairman for the opportunity to express our opposition to HB 219 6and respectfully request that you take no action on this bill. I would welcome any questions from you or the members of your committee.

KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
Email: ksbar@ink.org

LEGISLATIVE TESTIMONY
HOUSE BILL 2196

February 6, 2001

T0: Chairman Bob Tomlinson and Members of the House Insurance Committee

FROM: Paul Davis, KBA Legislative Counsel

Mr. Chairman and Members of the Committee:

The Kansas Bar Association is an organization of over 6,000 attorneys, judges, legal assistants and law students. I am here today to testify in opposition to the enactment of House Bill 2196. This legislation represents a far-reaching departure from the current law regarding tort responsibility. Our civil justice system is based on the premise that all individuals are responsible for their own actions. The way that accountability is addressed in Kansas is through the comparative fault system. This bill will basically do away with the comparative fault system in a number of instances. Our members come from both the plaintiff and defense perspective, but they agree that the steps taken in this legislation to dismantle the comparative fault system in certain circumstances represents bad public policy.

I'd like to address the bill section by section. Section 2 states that "no person may recover damages if the plaintiff's injuries were in any way proximately caused by plaintiff's commission of any felony, or immediate flight therefrom, and plaintiff has been duly convicted of that felony." On its face, the goal of this section seems to make sense. However, the practical application of the provision could have devastating consequences. I spend most of my time in the Judiciary Committee and it seems like we are creating more and more felonies every year. Quite

House Commerce
Feb 6, 2001
Attachment #7

frankly, I was a little surprised to see what types of crimes are felonies. They include forgery, writing a bad check, destroying a written instrument, altering a legislative document, making a false writing, tampering with a traffic signal, or impairing a security interest. Imagine that you go to the furniture store with your children or spouse. You buy a new sofa with a bad check and on the way home, you and your family are struck by a man who was driving recklessly. This man and his insurance company are off the hook because you and your family are precluded from collecting non-economic damages for any medical injuries suffered.

Section 3(a)(1) precludes an injured person, who at the time of the accident was either driving under the influence, committing involuntary manslaughter or committing vehicular homicide, from recovering non-economic damages (better known as pain and suffering). I might note that this includes minors who are driving under the influence (.02 blood alcohol content or above). This section is troubling because it fails to allow a jury to determine whether there was a causal connection between the accident that resulted in the person's injury and the injured person's criminal violation. For example, let's say I've had a few too many drinks and I decide to go outside and move my car that is parked at the end of my driveway into the garage. When I sit in the driver's seat and put the key in the ignition, I am driving under the influence. And when I do this, I'm struck by a driver who fell sleep while driving and veered into my yard. In this situation, my alcohol impairment did not have a causal relationship with the accident. However, I would be precluded from obtaining non-economic compensation for my damages and the other driver and his or her insurance company would be off the hook.

You ask, but what about other situations where a driver's alcohol impairment did factor into the accident? Are we going to allow these persons to collect damages? Both plaintiff and defense attorneys will tell you that a drunk driver has essentially no chance of receiving damages in these situations. However, because of the example I just gave it is important that these situations be judged on a case by case basis by a jury. We have a way of sorting out these issues and it's called the jury system. It's not always perfect, but it's the best system we have.

Section 3(a)(2) and (3) are perhaps the most troublesome portions of the bill. Under these sections, an injured person who is either the operator or owner of a motor vehicle involved in an accident would not be able to obtain compensation for injuries and damages sustained because the injured person or the motor vehicle itself did not have insurance. I understand the significance of the uninsured motorist problem in this State. I think we all want to find a solution to this problem, but this provision of the bill is not it. This provision takes away compensation from an uninsured driver who is injured in an accident caused by someone else. It says that the insurance company for the at-fault driver does not have to pay non-economic damages to the driver who is injured by the at-fault driver. Suppose a mother of young children has trouble making ends meet and she lets her insurance lapse, intending to reinstate it next month. What happens if a driver with insurance runs a red light and kills her. Her children may recover nothing more than burial expenses. The insurance company, even though it collected premiums for liability coverage, is largely off the hook. Should the mother have had insurance coverage? Of course. However, we must make a value judgment about which offense should carry the greater punishment: driving uninsured or reckless driving? For me, this is a easy question to answer.

I must return to the premise of our civil justice system which is that we hold individuals accountable for their actions. We are not furthering personal responsibility by allowing at-fault drivers to walk away from the damage that their actions have caused. This is precisely what this bill will accomplish. I appreciate you allowing me to present this testimony and urge you to not act favorably upon this legislation. Thank you!