

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 14, 2008 in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Bev Beam, Committee Secretary
Jill Shelley, Kansas Legislative Research Department

Conferees appearing before the committee:

John Meetz, KID
Jeffrey Lewis, AT&T General Counsel
John Peterson, Enterprise Leasing
Larry Magill, KAIA

Others attending:

See attached list.

The Chair called the meeting to order.

Hearing on:

SB 463 - concerning insurance; requiring self-insurers of motor vehicles to provide both uninsured and underinsured motorist coverage

Melissa Calderwood was asked to give an overview of SB 463.

Ms. Calderwood stated the bill was requested by the Insurance Department. It would amend an auto insurance liability law to require that self insurers provide for each motor vehicle, both uninsured and underinsured motorist coverage for bodily injury or death. The amount of the coverage would be limited to an amount equal to the limit of the self insurance and the self insurer would be permitted by the bill to reject any excess coverage in writing to the Insurance Commissioner. Current law, K.S.A. 40-3107e limits liability coverage to not less than \$25,000 for bodily injury or death for one person and not less than \$50,000 for bodily injury or death for two or more persons and not less than \$10,000 for destruction of property in any one accident. The fiscal note has been made available and the Insurance Department indicates there would be no fiscal effect associated with the enactment of the bill.

John Meetz, Kansas Insurance Department, testified in support of this bill stating that it would require self-insurers to provide uninsured and underinsured motor vehicle coverage in the same way that it is required of commercial insurers in the State of Kansas. He said if the amount of the uninsured or underinsured motorist coverage exceeds the limits of self-insurance under current law, the self-insurer may reject the amount in writing to the Insurance Department. Mr. Meetz continued that since the Insurance Department has had regulatory authority over self-insurers, the Department has taken the position that uninsured/underinsured motorist coverage would be provided by self-insurers. He said this was communicated to each company in the letter granting approval of the application for self-insurance.

Mr. Meetz noted that the purpose of SB 463 is to place self-insurers on the same level as any other commercial insured. He said the self-insurer will have to provide uninsured and underinsured motorist coverage at a limit equal to its limit of self insurance; the self-insurer will have the ability to reject uninsured and underinsured motorist coverage in excess of the minimum limits of 25/50 as any other individual or company can; if the self-insurer chooses to reject the excess limits of coverage, the Kansas Insurance Department will provide a form to accomplish this task. (Attachment 1)

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 14, 2008 in Room 136-N of the Capitol.

Jeffrey E. Lewis, General Counsel, AT&T Kansas, testified in opposition to this bill. Mr. Lewis stated SB 463 would require qualifying self-insurers to provide for each motor vehicle both uninsured and underinsured motorist coverage for bodily injury or death. However, he said the Committee should be aware that the proposed bill appears to have inconsistencies. He said the bill specially requires the amount of such coverage to be equal to the limit of self insurance. He said the bill then goes on to state that each self-insurer has the opportunity to reject any amounts of such coverage in excess of the statutory limits for bodily injury or death. He noted self insurers such as AT&T doing business in Kansas are also required to maintain workers compensation insurance. Under existing laws, workers compensation is generally designed to be the sole remedy for employee injury claims against an employer, he said. The proposed language in SB 463 could be read to allow employees to recover damages caused by uninsured or underinsured motorists in excess of damages and other compensation that the employee would receive under workers' compensation laws. (Attachment 2)

John Peterson, Enterprise Leasing, also testified in opposition to SB 463. Mr. Peterson said SB 463 amends K.S.A. 40-284 requiring self insured to provide for each motor vehicle uninsured and underinsured motorist coverage for bodily injury and death. He said the current language is vague and provides no clarification for a driver or occupant of a self insured vehicle who already has available source of uninsured or underinsured motorist coverage. He continued that the amendment he proposed would expand the current legislation to protect the consumer from having redundant coverage and would provide clear direction for the driver or occupants to use their already available insured or underinsured motorist coverage. (Attachment 3)

The Chair closed the hearing on SB 463 and opened the hearing on SB 498.

Hearing on:

SB 498 - concerning insurance; relating to the amount of certain penalties

Melissa Calderwood gave an overview of SB 498. Ms. Calderwood noted this bill is also requested by the Insurance Department and would increase the penalty associated with the failure to provide reports and other information to the Insurance Commissioner as required by the statute. She said the bill would increase the existing penalty amounts of up to \$500 for a violation to up to \$1,000 for violation or act. The bill also would increase the amounts of initial penalty to be assessed on a weekly basis until the receipt of the information from up to \$100 to an amount up to \$500.00. The fiscal note states there will be no fiscal effect associated with enactment of the bill. The Department anticipates more timely responses from the higher penalties but not additional penalty receipts, she said.

Mr. Meetz testified in support of SB 498 stating that this bill allows the Commissioner, after a due process hearing, to fine any producer or company that fails to file a required report or respond to a proper inquiry by the Commissioner. He said currently the fine for the first violation is set at \$500 and an additional penalty of \$100 may be imposed for each week thereafter. He said SB 498 would raise these fines to \$1,000 and \$500 respectively. He noted that while the vast majority of companies and producers are diligent in filing their reports and responses to Department inquiries, a few do not file their premium tax reports. They withhold financial and market conduct information or they ignore inquires about consumer complaints. He said these violations of the law can continue for months despite repeated requests. He continued that the longer the delay in the payment of taxes, the more a company can profit from the interest on the money which rightfully belongs to Kansas. Mr. Meetz said SB 498 will help take the profit out of ignoring the law and urged the committee to adopt the bill. (Attachment 4)

Larry Magill, KAIA, testified as a neutral party stating he was only offering technical amendments to the bill that would correct the reference to insurance agents in the back of the bill.

There being no further business, the meeting adjourned at 10:30 a.m.

**SENATE FINANCIAL INSTITUTIONS & INS. COMMITTEE
GUEST LIST**

DATE: 2-14-08

NAME	REPRESENTING
Alex Kotoyantz	P.I.A.
John Peterson	Enterprise Leasing
Jettray Lewis	AT&T Kansas
John Beebe	KID
Bill Sneed	State Farm
John Campbell	ITID
Lori Church	KAPCIC
Whitney Damron	Kansas Gas Service
LARRY MAGILL	KAIN
KERRI SPIELMAN	KAIN
RICK WILBORN	FARMERS ALLIANCE INS Co



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON SB 463

SENATE FINANCIAL INSTITUTIONS AND INSURANCE February 14, 2008

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear today in support of SB 463. This bill would require self-insurers to provide uninsured and underinsured motor vehicle coverage in the same way that it is required of commercial insurers in the State of Kansas. If the amount of the uninsured or underinsured motorist coverage exceeds the limits of self-insurance under current law, the self-insurer may reject the amount in writing to the Insurance Commissioner.

Since the Insurance Department has had regulatory authority over self-insurers we have taken the position that uninsured/underinsured motorist coverage would be provided by self-insurers. This was communicated to each company in the letter granting approval of the application for self-insurance. The basis for our position was that this coverage is compulsory for anyone who purchases an insurance policy, so we believe that this requirement should extend to self-insurers as well.

In 2005, the Kansas Supreme Court issued an opinion in the court case Farmers Insurance Company, Inc., and Roger Kandt, v. Southwestern Bell Telephone Company, that self-insurers are not required to provide uninsured motorist coverage based on the fact that K.S.A. 40-284 does not specifically require them to provide this coverage.

The purpose of SB 463 is to place self-insurers on the same level as any other commercial insured.

- The self-insurer will have to provide uninsured and underinsured motorist coverage at a limit equal to its limit of self insurance.
- The self-insurer will have the ability to reject uninsured and underinsured motorist coverage in excess of the minimum limits of 25 / 50 as any other individual or company can.
- If the self-insurer chooses to reject the excess limits of coverage, the Kansas Insurance Department will provide a form to accomplish this task.

Thank you for the opportunity to appear today and I would be happy to stand for questions.

John Meetz

*FI&I Committee
February 14, 2008
Attachment 1*



Jeffrey E. Lewis
General Attorney & Assistant
General Counsel-Kansas

AT&T Ka.
220 SE 6th Street
Suite 515
Topeka, KS 66603

785.276.8411 Phone

Testimony of Jeffrey E. Lewis,
General Attorney & Assistant General Counsel – AT&T Kansas
In opposition of SB 463 – Self Insurance/Uninsured & Underinsured Motorists
Before the Committee on Financial Institutions and Insurance
February 14, 2008

Mr. Chairman and Members of the Committee,

My name is Jeffrey E. Lewis and I am the General Attorney & Assistant General Counsel of AT&T Kansas . I appreciate this opportunity to speak with you regarding an important issue of concern to AT&T in its capacity as a company doing business in Kansas and a qualified self-insurer.

SB 463 would require qualifying self-insurers to provide for each motor vehicle both uninsured and underinsured motorist coverage for bodily injury or death. However, the Committee should be aware that the proposed bill appears to have inconsistencies. For example, the bill specially requires the amount of such coverage to be equal to the limit of self insurance. However, the bill then goes on to state that each self-insurer has the opportunity to reject any amounts of such coverage in excess of the statutory limits for bodily injury or death prescribed in KSA 40-3107. We are concerned that this bill could be construed to require a self insurer to maintain an amount of self insurance for uninsured or underinsured motorists, well in excess of the statutory limits.

In addition, self insurers such as AT&T doing business in Kansas are also required to maintain workers compensation insurance. Under existing laws, workers compensation is generally designed to be the sole remedy for employee injury claims against an employer. In fact, KSA 40-284 states that an “insurer” may provide for an exclusion or limitation to the extent that workers’ compensation benefits apply. It is unclear whether this limitation applies to “self-insurers”. The proposed language in SB 463 arguably could be read to allow employees to recover damages caused by uninsured or underinsured motorists in excess of damages and other compensation that the employee would receive under workers’ compensation laws. In any event, the extra costs incurred by the self insurer in paying additional claims for underinsured/uninsured motorists will ultimately be borne by the consumer and other customers.

Thank you very much for your consideration.

*FI&I Committee
February 14, 2008
Attachment 2*

TESTIMONY
JOHN PETERSON REPRESENTING
ENTERPRISE CAR RENTAL
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
SB 463
February 14, 2008

Madam Chair, Members of the Committee, my name is John Peterson and I am pleased to appear today on behalf of Enterprise Leasing Company of KS to request your consideration to amend SB 463.

SB 463 amends K.S.A. 40-284 – requiring self insured's to provide for each motor vehicle uninsured and underinsured motorist coverage for bodily injury and death. The current language is vague and provides no clarification for a driver or occupant of a self insured vehicle who already has available source of uninsured or underinsured motorist coverage.

The amendment we are proposing today would expand the current legislation to protect the consumer from having redundant coverage and would provide clear direction for the driver or occupants to use their already available uninsured or underinsured motorist coverage. In instances where the driver or occupant did not have any other available source of uninsured or underinsured coverage then a self-insurer shall provide uninsured and underinsured motorist coverage for bodily injury or death arising out of the ownership, operation, maintenance or use of a self-insured motor.

I want to thank you for your time today and request the committee's consideration and adoption of our attached proposal to amend SB 463.

*FI & I Committee
February 14, 2008
Attachment 3*

SENATE BILL No. 463

By Committee on Financial Institutions and Insurance

1-24

Proposed Amendment
Enterprise Rent-A-Car
John C. Peterson
February 14, 2008

3-2

9 AN ACT concerning insurance; requiring self-insurers of motor vehicles
10 to provide both uninsured and underinsured motorist coverage;
11 amending K.S.A. 40-284 and repealing the existing section.
12

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

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

34 (b) Any uninsured motorist coverage shall include an underinsured
35 motorist provision which enables the insured or the insured's legal rep-
36 resentative to recover from the insurer the amount of damages for bodily
37 injury or death to which the insured is legally entitled from the owner or
38 operator of another motor vehicle with coverage limits equal to the limits
39 of liability provided by such uninsured motorist coverage to the extent
40 such coverage exceeds the limits of the bodily injury coverage carried by
41 the owner or operator of the other motor vehicle.

42 (c) The insured named in the policy shall have the right to reject, in
43 writing, the uninsured motorist coverage required by subsections (a) and

1 (b) which is in excess of the limits for bodily injury or death set forth in
2 K.S.A. 40-3107 and amendments thereto. A rejection by an insured
3 named in the policy of the uninsured motorist coverage shall be a rejection
4 on behalf of all parties insured by the policy. Unless the insured
5 named in the policy requests such coverage in writing, such coverage need
6 not be provided in any subsequent policy issued by the same insurer for
7 motor vehicles owned by the named insured, including, but not limited
8 to, supplemental, renewal, reinstated, transferred or substitute policies
9 where the named insured had rejected the coverage in connection with
10 a policy previously issued to the insured by the same insurer.

11 (d) Coverage under the policy shall be limited to the extent that the
12 total limits available cannot exceed the highest limits of any single applicable
13 policy, regardless of the number of policies involved, persons covered,
14 claims made, vehicles or premiums shown on the policy or premiums paid
15 or vehicles involved in an accident.

16 (e) Any insurer may provide for the exclusion or limitation of
17 coverage:

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

20 (2) when the uninsured automobile is owned by a self-insurer or any
21 governmental entity;

22 (3) when there is no evidence of physical contact with the uninsured
23 motor vehicle and when there is no reliable competent evidence to prove
24 the facts of the accident from a disinterested witness not making claim
25 under the policy;

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

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

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

30 (f) An underinsured motorist coverage insurer shall have subrogation
31 rights under the provisions of K.S.A. 40-287 and amendments thereto. If
32 a tentative agreement to settle for liability limits has been reached with
33 an underinsured tortfeasor, written notice must be given by certified mail
34 to the underinsured motorist coverage insurer by its insured. Such written
35 notice shall include written documentation of pecuniary losses incurred,
36 including copies of all medical bills and written authorization or a court
37 order to obtain reports from all employers and medical providers. Within
38 60 days of receipt of this written notice, the underinsured motorist coverage
39 insurer may substitute its payment to the insured for the tentative
40 settlement amount. The underinsured motorist coverage insurer is then
41 subrogated to the insured's right of recovery to the extent of such payment
42 and any settlement under the underinsured motorist coverage. If the
43 underinsured motorist coverage insurer fails to pay the insured the

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1 amount of the tentative tort settlement within 60 days, the underinsured
2 motorist coverage insurer has no right of subrogation for any amount paid
3 under the underinsured motorist coverage.

4 (g) Each person who qualifies as a self-insurer pursuant to K.S.A. 40-
5 3104 or 66-1,128, and amendments thereto, shall provide for each motor
6 vehicle both uninsured and underinsured motorist coverage for bodily
7 injury or death. The amount of each such coverage shall be equal to the
8 limit of self-insurance. Each self-insurer shall have the opportunity to
9 reject any amount of uninsured or underinsured motorist coverage which
10 exceeds the limits for bodily injury or death prescribed in K.S.A. 40-3107
11 and amendments thereto. A self-insurer's rejection of excess coverage shall
12 be made in writing on a form provided by the commissioner. A copy of
13 the completed form shall be filed with the commissioner.

14 Sec. 2. K.S.A. 40-284 is hereby repealed.

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

A self-insurer shall provide uninsured and underinsured motorist coverage for bodily injury or death arising out of the ownership, operation, maintenance or use of a self-insured motor vehicle in those instances where the driver and occupants do not have any other available source of uninsured or underinsured motorist coverage.

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3-4



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON SB 498

SENATE FINANCIAL INSTITUTIONS AND INSURANCE February 14, 2008

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear today in support of SB 498. Current Kansas law, K.S.A. 40-2,125 (last amended in 1997), allows for the Commissioner, after a due process hearing, to fine any producer or company that fails to file a required report or respond to a proper inquiry by the Commissioner. The fine for the first violation is set at \$500 and an additional penalty of \$100 may be imposed for each week thereafter. Senate Bill 489 would raise these fines to \$1000 and \$500 respectively.

While the vast majority of companies and producers, more than 99 %, are diligent in filing their reports and responses to Department inquiries, a very few do not file their premium taxes reports, they withhold financial and market conduct information, or they ignore inquiries about consumer complaints. These violations of the law can continue for months despite repeated requests.

There is a time value of money. The longer the delay in the payment of taxes, the more a company can profit from the interest of the money which rightfully belongs to Kansas. The delay in providing financial examination and market regulation information endangers the public which must be protected from insolvencies and illegal market practices.

Most disturbing are the delays in answering consumer complaints. A citizen with a damaged roof or inoperable car can be in dire straits. There have been cases when companies do not respond to repeated requests for information on consumer complaints in what appears to be a deliberate strategy of obfuscation and delay. No Kansan should be denied or delayed payment of a just claim as a result of stalling tactics.

As stated before, 99% of the companies and producers do cooperate with the Department. The 1% who do not should not be allowed to profit by delay tactics. SB 498 is a measure response to a real problem that if left unchecked, will grow. SB 498 will help take the profit out of ignoring the law and we urge the committee to adopt the bill.

John Meetz
Government Affairs Liaison

*FI & I Committee
February 14, 2008
Attachment 4*