

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 March 3, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the committee:

Melissa Calderwood, Principal Analyst, Research Department
Kathy Olsen, KBA, (Attachment 1)
Tom Thull, State Banking Commissioner, (Attachment 2)
Lance Caldwell, Promontory Interfinancial Network (Attachment 3)
Dennis McKinney, State Treasurer (Attachment 4)
Matt Goddard, Heartland Community Bankers (Attachment 5)
Report of the Electronic Motor Vehicle Financial Security Verification System Task Force (Attachment 6)
Joe Thesing, NAMIC (Attachment 7)
Alex Hageli, PCI
Dave Hansen, Kansas Assn. Of Property & Casualty Insurers and PCI (Attachment 8)
Lee Wright, Farmers Insurance Group (Attachment 9)
Bren Abbott, Farmers Insurance Group (Attachment 10)
Rick Wilborn, Farmers Alliance (written only) (Attachment 11)
Bill Sneed, State Farm Insurance (written only) (Attachment 12)
Travis Burk, Kansas Association for Justice (Attachment 13)

Others attending:

See attached list.

The Chair called the meeting to order and welcomed everyone.

The Minutes were previously e-mailed to committee members; therefore, the Chair asked for a motion to approve the Minutes of February 25 and 26. Senator Kelsey so moved. Senator Colyer seconded. Motion passed.

Hearing on

HB 2185 - Public moneys, reciprocal deposit program.

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of the bill. She stated **HB 2185** would amend current law to allow local governments and the Pooled Money Investment Board (PMIB) to deposit public funds with banks that participate in a reciprocal deposit program, such as the Certificate of Deposit Account Registry Service (CDARS). Public fund balances that exceed the amount that is insured by the Federal Deposit Insurance Corporation (FDIC) and are deposited in reciprocal deposit program banks would not be required to be secured. She noted that the PMIB estimates that passage of **HB 2185** would require increased staff time to develop new documents and operating procedures; however, any costs could be handled with existing resources. She said according to the Office of the State Bank Commissioner, enactment of **HB 2185** would have no fiscal effect on the agency.

Kathy Olsen, KBA, testified in support of **HB 2185**. She stated that this bill will codify two Kansas Attorney General's opinions regarding the utilization of Reciprocal Deposit Programs for local and state public fund deposits in Kansas. She said on April 15, 2004, Kansas Attorney General Phill Kline issued an opinion letter in response to a request from State Representative Tom Thull that first enabled local government agencies to place public funds in certificates of deposit through FDIC-insured banks, savings and loan associations and

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on March 3, 2009, in Room 136-N of the Capitol.

savings banks that participated in the Certificate of Deposit Account Registry Service, a reciprocal deposit program administered by Promontory Interfinancial Network, LLC.

Ms. Olsen noted that since the issuance of the 2004 opinion, more than \$1 billion in public funds have benefitted from access to the CDARS reciprocal deposit program network. She said Kansas public entities utilizing the CDARS reciprocal deposit program include, but are not limited to counties, cities, school districts, water districts and community colleges. She said a subsequent Attorney General's opinion further clarified that banks, savings & loans and savings banks could also utilize the CDARS program for state idle fund deposits provided that the Pooled Money Investment Board determined that the program is consistent with its investment goals. She added that today there are 83 Kansas banks that are utilizing the CDARS reciprocal deposit program and 23 of those banks have utilized the program for public fund deposits. She said use of the CDARS program has increased dramatically in recent months because of the loss of excess deposit insurance as a viable option for banks seeking to insure and protect private and public depositors with deposit amounts that exceed the \$250,000 FDIC insurance limit. She said the ability for Kansas banks to have access to reciprocal deposit programs to maintain the local investment of idle public funds is more important now than ever. ([Attachment 1](#))

Tom Thull, State Banking Commissioner, testified in support of **HB 2185**. He stated that this bill would clarify how reciprocal deposit programs are to be treated under the statutes concerning public funds. He noted that at a time when there is intense competition for deposits, **HB 2185** will allow Kansas banks to compete for local public deposits. He said the ability to access reciprocal deposit programs is important for two reasons. First, the rate the bank is able to pay the depositor may be higher and second, these deposits are made available to the bank's loan customers. ([Attachment 2](#))

Lance Caldwell, Regional Director, Promontory Interfinancial Network, testified in support of **HB 2185**. Mr. Caldwell said Certificate of Deposit Account Registry Service (CDARS) program is a deposit placement service that provides up to \$50 million in Federal Deposit Insurance Corporation coverage per depositor through a single financial institution. He said CDARS has received approval for Public Unit Deposits across the United States. He said CDARS allows participating financial institutions to offer a competitive rate to Public Unit Depositors regardless of what other banks are paying within the network. ([Attachment 3](#))

State Treasurer, Dennis McKinney, testified in support of **HB 2185**. Treasurer McKinney stated that there are three primary goals in the management of state idle funds. They are, one, to protect the safety of the public funds, especially idle funds, two, utilize a system that engaged competition for idle monies to secure the best possible interest earnings for the benefit of the taxpayers and, three, invest idle funds in a way that allows the funds to remain within the Kansas economy, preferably in ways that allow the funds to provide liquidity for loans within the Kansas economy. He stated that idle funds are short term investments which may be needed in the near future, therefore, safety of the principal is paramount. ([Attachment 4](#))

Matt Goddard, Vice President, Heartland Community Bankers Association, submitted written testimony only. ([Attachment 5](#))

The Chair closed the hearing on **HB 2185**.

Hearing on

SB 260 - No cause of action for recovery of certain loss while operating uninsured motor vehicle.

Melissa Calderwood, Research Department, gave an overview of **SB 260**. Ms. Calderwood stated a copy of the report of the Electronic Motor Vehicle Financial Security Verification System Task Force that was chaired this past interim by the Commissioner of Insurance and her representatives is in the Committee's handout material. She stated that anyone who has not maintained the personal injury protection benefits coverage

mandated by current law would be prohibited from receiving a cause of action for recovery of non-economic

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on March 3, 2009, in Room 136-N of the Capitol.

loss sustained as a result of the accident. In addition, she said the bill would prohibit any similar benefit to anyone convicted of or who pled guilty to an alcohol or drug related violation in connection to an accident. ([Attachment 6](#))

Joe Thesing, Director of State Affairs, National Association of Mutual Insurance Companies, (NAMIC), testified in support of **SB 260**. He said he would provide a broad brush of the national perspective. No pay, no play legislation prohibits the recovery of non-economic damages for uninsured motorists. It does not have any impact on the collection of economic loss and it does not impact economic recovery by passengers in a vehicle, he said. He added that no pay, no play legislation, NAMIC believes, is a concrete step states can take to reduce the number of uninsured motorists in the state. Electronic systems are still unproven. Electronic verification systems are costly, he noted. There are also still privacy concerns for customers and we are dealing with multiple data bases. He said the industry is committed to finding an electronic solution. He added this no pay, no play legislation is the result of three or four years of study and I believe it is a good step forward. ([Attachment 7](#))

Alex Hageli, PCI, testified in support of **SB 260**. No pay, no play comes in many different forms, he said. Some states are straight forward but others have multiple variations. He said the results of no pay, no play are mixed. He said with respect to the benefits of no pay, no play, it is entirely self-executing. There is no cost to the companies and no cost to the state. It does reinforce the idea that insurance is an important public policy for its residents to purchase, to drive with insurance and, if they fail to do so, there will be consequences. In concluding his remarks, Mr. Hageli agreed to provide written testimony to the Committee.

Dave Hanson, on behalf of the Kansas Association of Property and Casualty Insurance Companies, testified in support of **SB 260**. Mr. Hanson stated that in response to growing concerns, the Legislature adopted a resolution three years ago establishing a task force to look into electronic verification of motor vehicle financial security compliance. He said a number of other states have already tried to use electronic verification and none have reported much success with reducing the number of uninsured motorists, nor with trying to avoid mismatches and erroneous matches. He said more recently, a web based system for comparing information is being tested in several states, but has not yet been in use long enough, nor on a broad enough scale to recommend in Kansas. He said, therefore we looked for other alternatives to recommend and found that a few states have tried and had some success with the “no pay, no play” concept with some variations, such as increased restrictions for repeat offenders. He noted that in addition to addressing uninsured motorists, some states have also included similar restrictions on motorists driving under the influence of intoxicating liquor or drugs and that similar provisions have been included in subsection (b) of the bill. He said this is more than a fairness issue, it is a strong message to those who violate the laws of Kansas and put others’ lives at risk that such conduct now puts them at risk also. Mr. Hanson said “No Pay, No Play” is essentially self-policing and it has the capability of catching those who have succeeded in evading our current system. ([Attachment 8](#))

Lee Wright, Senior Governmental Affairs Representative for Farmers Insurance Group, testified in support of **SB 260**. Mr. Wright stated that the concept of the legislation is relatively simple. He said if an uninsured driver is involved in a vehicle accident, they are restricted to recovering only their economic damages. Economic damages would include medical expenses, lost wages, and property damage. He said the uninsured driver is not eligible to receive compensation for non-economic damages (pain and suffering). He said also, **SB 260** would preclude a person involved in an accident and convicted of DUI from recovering for non-economic damages. ([Attachment 9](#))

Bren Abbott, Abbott, Davidson & Southard, testified in support of **SB 260**. Mr. Abbott stated that this bill is a remarkably simple bill that limits when someone can make a claim for noneconomic losses. He said it only applies in two situations. Those are, when an illegally uninsured motorist is operating an uninsured automobile and when he or she is convicted of, or pleads guilty to, refusing or failing a test for alcohol or drugs following the accident or is convicted of driving under the influence of alcohol or drugs. ([Attachment 10](#))

Rick Wilborn, Farmers Alliance, submitted written testimony only in support of **SB 260**. ([Attachment 11](#))

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on March 3, 2009, in Room 136-N of the Capitol.

Bill Sneed, on behalf of The State Farm Insurance Companies, submitted written testimony only in support of **SB 260**. (Attachment 12)

Travis Burk testified on behalf of the Kansas Association for Justice in opposition to **SB 260**. Mr. Burk states that **SB 260** eliminates a cause of action for recovery of non-economic loss that is the result of an accident while operating an uninsured motor vehicle. He said non-economic damages are those damages that are not easily quantifiable in dollar amounts such as severe pain, disfigurement, and loss of enjoyment of life activities because of injury, including physical impairment. He said non-economic damages are the only compensation a jury can provide for the injury itself, as opposed to economic damages which represent the injured person's out-of-pocket costs such as lost wages, medical bills, and property damage. Mr. Burk said it is their belief that **SB 260** is disproportionate and not well tailored to encourage Kansans to buy and maintain auto coverage. He noted that **SB 260** attempts to punish people for driving without insurance coverage, but the punishment is completely disproportionate to failure to maintain insurance coverage and instead has the effect of protecting dangerous drivers. He also noted that this bill is not going to result in greater compliance with mandatory insurance coverage laws. He said this bill has the effect of punishing people who may be uninsured through no fault of their own. He added that under current law, there are already significant penalties for failure to maintain the required coverage such as fines and court costs, potential jail time and suspension of both the license of the driver and of the owner of the vehicle until damages are paid. (Attachment 13)

The Chair closed the hearing on **SB 260**.

The next meeting is scheduled for March 4, 2009.

The meeting was adjourned at 10:30 a.m.