

Uninsured Motorists—Prohibition from Right to Recover Non-Economic Loss

SB 136 enacts new law to provide that anyone operating an uninsured vehicle who, at the time of an auto accident, has not maintained personal injury protection benefits coverage as mandated by law (the Kansas Automobile Injury Reparations Act) would be prohibited from having a cause of action for the recovery of non-economic loss sustained as a result of the accident.

The prohibition from having a cause of action for non-economic loss would not apply and a cause of action for non-economic loss could be maintained if the court finds by clear and convincing evidence that the person bringing the cause of action did not knowingly, at the time of the accident, drive a motor vehicle that was without personal injury protection benefits coverage as mandated by law.

The prohibition from having a cause of action for non-economic loss also would not apply to any person who, at the time of the accident, failed to maintain coverage for a period of forty-five days or less and had maintained continuous coverage for at least one year prior to such failure to maintain coverage.

Additionally, the bill provides that any person who is convicted of, or pleads guilty to, an alcohol or drug-related violation in connection with an auto accident also would be prohibited from this recovery. The violations referenced in the bill include the suspension and restriction of driving privileges for test refusal, test failure or drug-related conviction (KSA 8-1014) and driving under the influence (DUI) of alcohol or drugs (KSA 8-1567).

Personal injury protection benefits are defined in existing law to mean the disability benefits, funeral benefits, medical benefits, rehabilitation benefits, substitution benefits and survivors' benefits required to be provided in motor vehicle liability insurance policies pursuant to this act. Economic damages generally include the cost of medical care, past and future, and related benefits, including lost wages, loss of earning capacity and other such losses; non-economic losses would include claims for pain and suffering, mental anguish, injury and disfigurement not affecting earning capacity, and other losses which cannot easily be expressed in monetary terms.