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**TO: Representative Jene Vickrey, Chairman
Representative Willie Dove, Vice-Chairman
Members of the House Insurance Committee**

**FROM: Blake A. Shuart, Hutton & Hutton Law Firm, L.L.C., Wichita
Individually and on behalf of the firm**

DATE: February 6, 2017

**RE: HB 2104: Motor vehicle liability insurance; amending uninsured
motorist coverage provision requirements and increasing the
minimum policy limit for bodily injury (SUPPORT)**

My name is Blake Shuart, and I am an attorney at Hutton & Hutton Law Firm, L.L.C., based in Wichita. We represent Kansans and their families in claims arising out of injury or death due to motor vehicle collisions, and I have also personally defended insurance companies and their insureds against similar claims. In total, I have prosecuted or defended hundreds of cases involving motor vehicle collisions.

During the 2015 legislative session, we came before Chairman Schwab and the House Insurance Committee to testify in support of HB 2067, which sought to increase the minimum motor vehicle liability policy limits in Kansas from 25/50/10 to 50/75/35. At that time, the Committee members posed many thoughtful questions, and many Representatives appeared receptive to the notion that the current minimum limits – which now have been in place for over 35 years without an increase – are inadequate. Unfortunately, HB 2067 was not advanced after the hearing on 2/4/15.

During the 2016 legislative session, we came before Chairman Longbine and the Senate Financial Institutions and Insurance Committee to testify in support of HB 2446 (increasing minimum property damage liability coverage from \$10,000 to \$25,000) after it passed in the House. The bill went on to clear the Senate and was passed into law. Thanks to the hard work of our legislature, the interests of Kansas consumers are now protected when their vehicles are damaged through no fault of their own.

There is work left to be done, however, and we now urge this Committee to take action to protect injured Kansans who are in wrecks that are not their fault, only to find that they are not getting what they thought they paid for when they purchased auto insurance.

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HB 2104 is designed to protect the consumer in two respects:

First, it will remove the off-set currently taken by auto insurers when it comes time to pay a claim for underinsured motorist (UIM) coverage. Under the current law, if Joe Consumer purchases a policy stating that it will provide \$25,000 in UIM coverage, and then is struck by a driver also carrying \$25,000 in bodily injury (BI) coverage, his \$25,000 in UIM coverage listed right on the face of his declarations page is worth absolutely nothing. Even if his damages for things like medical expenses and lost wages total up to \$50,000, he cannot make claim against his own \$25,000 UIM policy, because the auto carrier is entitled to an “off-set” – the other driver’s \$25,000 is subtracted from his own \$25,000, leaving him with \$0 in coverage.

Similarly, if Joe Consumer carries a \$50,000 UIM policy and the other driver also has \$50,000, he has no UIM coverage at all after the off-set, even if his damages are \$100,000. If he carries \$50,000 in UIM and the other driver carries \$25,000 in BI, he is limited to recovering only \$25,000 from his \$50,000 UIM policy due to the off-set, even if his damages are in excess of this amount.

When a consumer pays a premium that is allocated in part to a particular type of coverage, and the coverage turns out to be functionally nonexistent – as is the case in Kansas with UIM coverage – the coverage is illusory. Many other states have seen the injustice in allowing insurers to charge a premium for illusory coverage, and have disallowed UIM off-sets. Kansas should do the same.

Even when insurers charge a bundled premium for both uninsured motorist (UM) coverage and UIM coverage under the policy, the consumer is paying for both types of coverage, the auto declarations page tells the consumer that he has purchased both types of coverage, and the consumer reasonably expects to be able to use both types of coverage in the event that either is needed.

Passing HB 2104 and removing the UIM off-set will restore fairness to consumers in the insurance market, and will allow them to get what they are paying for.

Second, HB 2104 will shift the burden borne by many – the victim and her medical providers included – when a Kansas consumer is injured in a wreck that was not her fault. In increasing the minimum BI liability limits from 25/50 to 50/100, the bill shifts more of the burden back on the at-fault driver, and away from the injured consumer and her medical providers.

Driving is a privilege – not a right – and those who exercise the privilege should be legally required to carry minimally adequate bodily injury liability insurance. In the 35+ years since the limits were last increased, consumer costs have more than doubled, and the increase is necessary to keep pace with inflation. Increasing the bodily injury limits will also help prevent health care providers from bearing part of the financial burden caused by under-insured drivers who cause traffic accidents by providing a greater pool of recovery from which to pay their bills.

Opponents of such legislation frequently argue that raising mandatory minimums will result in premium increases, causing undue financial hardship on low-income drivers and ultimately causing more uninsured drivers on the roadways. Kansas is currently the #10 least expensive state for automobile insurance, however, with an average expenditure of \$632.07. *Source: 2014 National*

Re: HB 2104 (SUPPORT)

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Association of Insurance Commissioners (NAIC). Meanwhile, according to 2012 U.S. Dept. of Commerce statistics, Kansas ranks #24 in per capita personal income. The argument linking increased minimums to an increase in uninsured drivers is tenuous, but the devastation and financial hardship flowing from under-insurance are real and tangible.

I appreciate the Committee's attention to these important issues, and thank you for your time.