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February 6, 2017

To: Rep. Jene Vickrey, Chairman
Members of the House Insurance Committee

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

P 816 474 0004
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ATTORNEYS

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My name is Matt Birch. I am an attorney and Kansas resident. I handle cases on behalf of injured people and their families seeking compensation. I support HB 2104. HB 2104 amends two portions of the mandatory financial responsibility law setting forth what is required in insurance policies sold to Kansas drivers.

- I. HB 2104 has the following two components:
- a. The bill adjusts the amount of required minimum liability coverage for drivers from \$25,000, to \$50,000; and
 - b. The bill eliminates the loophole whereby Kansas Consumers are sold \$25,000 less underinsured motorist (UIM) coverage than they intend to buy.

II. The Minimum Liability Insurance Coverage Adjustment.

Kansas first enacted limited mandatory financial responsibility laws in 1939. Included within the legislation was the requirement that drivers maintain a minimum amount of coverage to ensure compensation for a person injured by the driver's negligent operation of a vehicle. Since 1981, the minimum amount of liability coverage required to drive in Kansas has been \$25,000.00. This amount has not been adjusted in the 36 years since.

The rationale for the legislation adopted in 1939 is that the negligent operation of a vehicle is a common cause of death or injury. That remains the case today. This negligence can be in the form of operating a vehicle under the influence of alcohol or drugs, operating a vehicle while texting or distracted, or simply ignoring the rules of the road. When an innocent person is injured by such negligence, it is the aim of the civil justice system to place the cost of that injury on the negligent person. Requiring a driver to maintain liability insurance on a vehicle helps to place the burden of the negligent conduct on the negligent driver.

Because the amount of mandatory liability coverage for Kansas drivers has not been adjusted since 1981, the law no longer achieves its purpose of placing the financial burden of negligent conduct on the negligent party. Inflation, and specifically the inflation in the costs of medical goods and services, has rendered the \$25,000 of coverage nominal at best in all but the most minor of cases. In fact, in terms of the medical goods and services required by those injured in auto collisions, \$25,000 in 1981 dollars would buy less than \$5,000 of such goods and services today.

Injuries suffered in vehicle collisions are no less a burden to society today than they were in 1939 or 1981. Those injured in such collisions will incur the medical bills occasioned by their injuries

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regardless of the insurance coverage maintained by the negligent driver. By allowing the negligent drivers to maintain such a low amount of insurance, the cost of these bills is commonly passed to tax-payers through Medicaid or Medicare, the health care providers who must write-off the bills, or the families of the injured. Increasing the amount of required coverage to \$50,000 while not completely making up for inflation since 1981 will help to shift some of the burden back to the appropriate party.

III. Eliminating the UIM Loophole

UIM coverage is the coverage included within an automobile policy that is intended to ensure funds to an injured person if a negligent driver does not carry sufficient liability insurance to fully compensate the injured person. Since 1968, UIM coverage must be equal to the amount of liability in a person's automobile policy. UIM coverage under the current mandatory coverage laws is \$25,000. Thus, in every policy issued to a Kansas driver, that driver buys at least \$25,000 of UIM coverage and pays the insurance carrier a premium for that coverage. Under Kansas law as it exists today however, that Kansas driver is not getting the coverage for which the premium is paid.

Under current Kansas law, however there is a loophole known in the industry as a "set-off." This loophole allows insurance carriers to reduce the amount of UIM coverage available to an injured person by the amount of the negligent driver's liability insurance. In other words, in every single auto collision in which a Kansas driver is injured by a negligent driver, assuming the drivers are carrying insurance as required under the law, the injured party's UIM coverage will actually be *at least \$25,000 less* than the amount the injured party intended to buy. Consider the following two examples:

- A. Driver A has bought \$25,000 in UIM coverage and paid the premiums for that coverage. Driver A is injured in a collision with a negligent Kansas driver. Driver A will never receive UIM coverage regardless of the amount of coverage carried by the negligent driver because the negligent driver must carry at least \$25,000 in liability coverage.
- B. Driver B has bought \$100,000 in UIM coverage and paid the premiums for that coverage. Driver B is injured in a collision with a negligent Kansas driver. Driver B will never receive UIM coverage in excess of \$75,000 because the negligent driver must carry at least \$25,000 in liability coverage.

In both situations, the set-off loophole renders \$25,000 of UIM coverage non-existent. It is illusory. Yet, the injured driver paid a premium for that coverage. This is patently unfair to Kansas consumers and it is a windfall to insurers. HB 2104 is necessary to ensure that Kansas drivers are receiving the coverage they purchase.

For all of these reasons, I respectfully request the committee's support for HB 2104.

Very truly yours,

**SHAMBERG, JOHNSON & BERGMAN,
CHARTERED**



Matt Birch