

## MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 3:30 p.m. on February 6, 2001 in Room 527-S of the Capitol.

All members were present except: Representative David Huff

Committee staff present: Bill Wolff, Legislative Research  
Ken Wilke, Legislative Revisor  
Mary Best, Committee Secretary

Conferees appearing before the committee: Mr. Lee Wright, Farmers Insurance  
Mr. Bren Abbott, Law Office of Ken Berra  
Mr. Ken Davis, American Family Insurance  
Mr. James Benfer, Kansas AFL-CIO  
Mr. John Parisi, Kansas Trial Lawyers  
Mr. Paul Davis, Kansas Bar Association  
Mr. Jerry Slaughter, Kansas Bar Association

Others attending: See Attached Guest List

The meeting was called to order by recognizing Mr. Jerry Slaughter, Kansas Medical Association. Mr. Slaughter offered an Amendment to **HB 2115**. A copy of the Amendment is (Attachment #1) attached hereto and incorporated into the Minutes by reference. The proposal would change K.S.A. 40-3003(a)(1) by including the phrase "or providers." This would eliminate any arguments the Guaranty Association and their legal staff has or may put forth that the provider claimants still remain outside of the category of claimants as persons covered under K.S.A. 40-3003. Representative Grant made the motion to adopt the amendment and Representative McCreary seconded the motion. Motion carried. Representative Edmonds abstained from voting. Representative Mayans moved to pass the bill out as amended, with Representative Sharp seconding the motion. The motion carried.

With this business concluded the Chairman called upon Revisor Ken Wilke to give an overview of **HB 2196** - Enacting the Personal Responsibility Act of 2001, (1994 Calif). Section 2 sets out that a felon cannot recover for damages and Section 3 is similar, when there is no insurance when a third party is driving another parties uninsured vehicle.

Mr. Lee Wright, Farmer's Insurance, was the first Proponent to give testimony to the committee. A copy of the testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference. Mr. Wright stated that the bill, often referred to as "no pay, no play," is fashioned after California as stated previously by Mr. Wilke. Similar laws have been passed in four other states. He stated to the committee that the law is really very simple. If you are an uninsured driver, not at fault in an accident, you may recover for property damage, medical expenses and loss of wages, but not punitive damages. In other words, you can get your car repaired or replaced, your medical and wages reimbursed, but you cannot collect for pain and suffering. You may not profit from someone else's policy. This type of bill passed in California and is upheld California Supreme Court. Mr. Wright stood for questions. There were none.

Mr. Bren Abbott, Law offices of Kenneth J. Berra, was the next conferee to come before the committee. Mr. Abbott presented Proponent Testimony, of which a copy is (Attachment #3) attached hereto and incorporated into the Minutes by reference. Mr. Abbott confirmed what was previously testified to and went more in depth on the contents of the bill, stating the bill was "designed to apply in very limited situations," and laid out four of these situations. He then laid out three reasons a injured person could not recover non-pecuniary damages. He also noted that "immunity" is not granted to the guilty party. The clear meaning of the statute does not affect innocent people. Mr. Abbott completed his testimony and stood for questions.

Questions were fielded from Representatives Boston, Vickery, Mayans, Hummerickhouse, Kirk, Ostmeyer, Grant, Huy, Toelkes, Sharp, O'Brien, McCreary, and Chairman Tomlinson. The questions covered actuaries writing policies for people under drugs or alcohol, lapse of renewal of policy, broad spectrum of the bill, who pays, people who have always been responsible now on limited incomes should be looked at differently with today's economy.

Mr. Kevin Davis, American Family Insurance, was the last Proponent to offer testimony. A copy of the testimony is ([Attachment #4](#)) attached hereto and incorporated into the Minutes by reference. Mr. Davis confirmed the previous testimony. Questions were asked by Representatives Boston, Grant, Kirk, Mayans, and Boston. There was a question concerning the bottom line savings to insurance companies. The response 5%.

This concluded the Proponent Testimony therefore, the Chairman recognized Mr. James Benfer, Kansas AFL-CIO. Mr. Benfer gave Opponent Testimony to the committee and a copy of his testimony is ([Attachment #5](#)) attached hereto and incorporated into the Minutes by reference. Mr. Benfer informed the committee that the reason he opposes the bill is "intended to be a limitation on the right to sue for damages of certain classes of individuals. Mr. Benfer spoke to the referral in the bill barring recovery for damages from pain, suffering physical impairment, and disfigurement. He gave three examples of this happening. Mr. Benfer felt the legislation "would insulate liability carriers based on circumstances of the accident totally unrelated to the concept of "fault", taking the rights of innocent persons, free from fault .....in the name of responsibility." The AFL-CIO does not feel this is legislation about "personal responsibility" but rather limiting "corporate responsibility." Mr. Benfer stood for questions. Questions were asked by Representatives Kirk, Huff, and Boston.

Mr. John Parisi, Kansas Trial Lawyers Association, was next to give Opponent Testimony to the committee. A copy of the written testimony is ([Attachment # 6](#)) attached hereto and incorporated into the Minutes by reference. Mr. Parisi also feels the legislation is targeted at the wrong people. While he does support the mandates for Kansas drivers to be insured, and that uninsured drivers should be addressed, he does not feel this is the legislation to do this, and that innocent individuals should not be denied right to recovery.

Mr. Parisi informed the committee that "In effect, HB 2196 rewards negligent drivers by statutorily immunizing their negligence by eliminating non-economic damages if they injure or kill an uninsured driver or the owner of an uninsured vehicle. The feeling is that the message is sent to the guilty driver that it ok to be negligent when you injure, kill or do damage to the property of an uninsured person because they had no insurance and their losses nor the losses of their families are of any consequence. This kind of responsibility is addressed under the Kansas comparative fault doctrine. Both parties cause the plaintiff's injuries and a jury determines the portion of fault for each." If the plaintiff is found to be 50% guilty, there is no recovery. They feel that this bill will eliminate comparative negligence as it is known now.

Mr. Parisi feels there are many Kansans are struggling to stay afloat financially now. These same people are hard working individuals who should not be subject to financial ruin if they are not at fault for an accident and have no way to recover, driving them into even more ruin and the need to make decisions which would even further jeopardize their families. He stated that "there is no evidence showing that everyone who doesn't purchase care insurance does so arrogantly, and without regard for the law." Mr. Parisi continued on to give more examples of where a negligent or reckless driver will not be held accountable for damages, injuries or deaths of innocent people. Mr. Parisi stood for questions. Chairman Tomlinson was the only member to present questions.

The last conferee to come before the committee was Mr. Paul Davis, Kansas Bar Association. Mr. Davis gave Opponent Testimony and a copy of the testimony is ([Attachment # 7](#)) attached hereto and incorporated into the Minutes by reference. Mr. Davis confirmed that the bill would eliminate comparative negligence system as we know it today. Mr. Davis stated that his members are from both plaintiff and defense sides when it comes to defending these matters and feel the same as well as represents bad public policy. Mr. Davis also gave several examples of the innocent people being punished by not being able to collect for non-economic damages for medical injuries. Mr. Davis went through the Sections and what consequences would be suffered with these changes.

Mr. Davis also spoke of the jury system and that is what the system is set up for. He spoke to the committee about how this creates more felonies to the already growing list of new felonies. He gave a scenerio of where he had been drinking, decided to go out and move his car into his driveway. He explained when he sits in the car, puts the key in the ignition he is driving under the influence. As he is doing this a driver who fell asleep behind the wheel of a car veers into his yard and hits him. While the alcohol did not have a casual relationship with the accident, the way this bill is written, he would be barred from non-economic compensation for damages and the other driver is off the hook and takes no responsibility. Mr. Davis gave a few more examples to the bill and concluded his testimony. Mr. Davis stood for questions.

There were no further questions and the meeting was adjourned. The time was 5:15 p.m.

The next meeting will be held February 8th.