

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

The meeting was called to order by REPRESENTATIVE TURNQUIST at
Chairperson

3:30 ~~am~~/p.m. on Tuesday, February 26, 1991 in room 531 N of the Capitol.

All members were present except:

Committee staff present:

Bill Edds, Revisor
Nikki Feuerborn, Committee Secretary

Chris Courtwright, Research

Conferees appearing before the committee:

Dick Brock
Bill Sneed
Richard Mason

Others attending: See Attached List

Representative Helgerson moved for the approval of the minutes of February 26, 1991, meeting. Representative Cribbs seconded the motion. Motion carried.

HB 2116 was opened for discussion with Representative Campbell explaining the language as designated in the balloon. See Attachment 1). Representative Neufeld suggested that the word "contract" be changed to "policy" on Lines 17 and 18.

Representative Campbell moved we adopt the proposed amendment to HB 2116. Representative Helgerson seconded the motion. Motion carried.

Representative Helgerson moved the bill be approved for favorable passage as amended. Representative Wells seconded the motion. Motion carried.

The addition of adding that the company should be notified in writing if the insurees wish to cancel the term insurance and request a refund was discussed by the committee. The committee was concerned that insurees would not be aware of this option if it was not made part of the statute. The Insurance Commissioner's office does make such information available to the public if they request it but this did not appear to be satisfactory to the committee. Representative Helgerson said he was willing to rescind his motion.

Representative Wells made a substitute motion in which she moved that the committee report HB 2116 as favorably passed with amendments and that it conceptually add notification in writing. The motion was seconded by Representative Ensminger. Motion carried.

Mr. Brock added that some insurance companies are returning unused premiums now that have a more favorable refund that what has been proposed by this bill. Mr. Edds said Kansas statute 40-420 will be amended in accordance with this proposed legislation.

Mr. Brock opened the discussion on the Insurance Premium Finance Company Act, HB 2146. Suggested changes were handed to Mr. Edds. Mr. Brock suggested deleting new Section 5 regarding worthless checks.

Representative Sawyer moved the committee adopt the proposed amendment to HB 2146. Representative Cribbs seconded the motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

room 531 N Statehouse, at 3:30 ~~a.m.~~ p.m. on Tuesday, February 26, 1991.

Mr. Brock suggested changing Line 38 of Section 2 from "a pro rata basis" to "an actuarial basis." Representative Campbell moved the committee adopt the proposed amendment. Representative Welshimer seconded the motion. Motion carried.

Mr. Edds of the Revisor's Office will make any required technical changes.

Representative Sawyer moved for the favorable passage of HB 2146 as amended. Representative Cribbs seconded the motion. Motion carried.

HB 2126 was opened for discussion. Kansas Trial Lawyer's Association suggested that certain language be reinserted on Lines 33-38 on Page 1.

Representative Sawyer moved that HB 2126 be amended as proposed. Representative Sprague seconded the motion. Motion carried.

Representative Sprague moved that Section 3 be struck from HB 2126. Representative Flower seconded the motion. The revisor is to make any technical corrections as required Motion carried.

Representative Sawyer moved we adopt the language as it appears in the suggested balloon on HB 2126 (See Attachment 2). Representative Helgerson seconded the motion. After lengthy discussion it was determined further study of the proposed balloon was necessary in order to establish actual meaning. Representative Sprague and other committee members agreed to meet on Wednesday morning and further discuss the bill.

Bill Sneed, representing State Farm Insurance, also presented a language change for HB 2126 (See Attachment 3). This suggested change will also be studied by the committee.

Meeting adjourned at 5:00 p.m.

HOUSE BILL No. 2116

By Representative Campbell

2-1

8 AN ACT relating to insurance; requiring refunds upon cancellation
9 of term life insurance ~~contracts~~.

policies

10
11 *Be it enacted by the Legislature of the State of Kansas:*

individual

12 Section 1. Upon the cancellation of any term life insurance con-
13 tract by the owner thereof, the insurer shall refund the portion of
14 the premium paid for such contract for the remainder of the term
15 of such contract from the date of receiving notification of such can-
16 cellation. For the purposes of this section, "term life insurance"
17 means a life insurance ^{Policy} contract that provides a benefit only if the
18 insured dies within a period stated in the ^{Policies} contract and is issued for
19 level, increasing or decreasing amounts for a stated period or to a
20 stated age.

policy

21 Sec. 2. This act shall take effect and be in force from and after
22 its publication in the statute book.

insurance company shall not refuse to refund unearned premiums for the remainder of the term for which premiums were paid. The amount of unearned premiums to be refunded shall equal the difference between the total premium paid and the amount derived by multiplying 1/3 of the quarterly rate by the number of months the policy was in effect

*Shawnee Freeman
Feb. 26, 1891
Attachment 1*

HOUSE BILL No. 2126

By Committee on Insurance

2-4

8 AN ACT relating to automobile liability insurance policies; concern-
9 ing coverage for injury or death caused by uninsured and un-
10 derinsured motorists; concerning subrogation of insurers providing
11 payments under such coverage; concerning the award of attorney
12 fees for failure to provide personal injury protection benefits;
13 amending K.S.A. 40-287 and ~~40-311~~ and K.S.A. 1990 Supp. 40-
14 284 and repealing the existing sections.
15

16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 1990 Supp. 40-284 is hereby amended to read
18 as follows: 40-284. (a) No automobile liability insurance policy cov-
19 ering liability arising out of the ownership, maintenance, or use of
20 any motor vehicle shall be delivered or issued for delivery in this
21 state with respect to any motor vehicle registered or principally
22 garaged in this state, unless the policy contains or has endorsed
23 thereon, a provision with coverage limits equal to the limits of li-
24 ability coverage for bodily injury or death in such automobile liability
25 insurance policy sold to the named insured for payment of part or
26 all sums which the insured or the insured's legal representative shall
27 be legally entitled to recover as damages from the uninsured owner
28 or operator of a motor vehicle because of bodily injury, sickness or
29 disease, including death, resulting therefrom, sustained by the in-
30 sured, caused by accident and arising out of ownership, maintenance
31 or use of such motor vehicle, or providing for such payment irre-
32 spective of legal liability of the insured or any other person or
33 organization. ~~No insurer shall be required to offer, provide or~~
34 ~~make available coverage conforming to this section in connec-~~
35 ~~tion with any excess policy, umbrella policy or any other policy~~
36 ~~which does not provide primary motor vehicle insurance for~~
37 ~~liabilities arising out of the ownership, maintenance, operation~~
38 ~~or use of a specifically insured motor vehicle.~~

39 (b) Any uninsured motorist coverage shall include an underin-
40 sured motorist provision which enables the insured or the insured's
41 legal representative to recover from the insurer the amount of dam-
42 ages for bodily injury or death to which the insured is legally entitled
43 from the owner or operator of another motor vehicle with coverage

No insurer shall be required to offer, provide or make available coverage conforming to this section in connection with any excess policy, umbrella policy or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation or use of a specifically insured motor vehicle.

Revised Insurance Attachment
Feb. 26, 1991

1 limits equal to the limits of liability provided by such uninsured
2 motorist coverage to the extent such coverage the right to recover
3 damages exceeds the limits of insured's recovery of damages from
4 the bodily injury coverage carried by the owner or operator of the
5 other motor vehicle.

6 (c) The insured named in the policy shall have the right to reject,
7 in writing, the uninsured motorist coverage required by subsections
8 (a) and (b) which is in excess of the limits for bodily injury or death
9 set forth in K.S.A. 40-3107 and amendments thereto. A rejection
10 by an insured named in the policy of the uninsured motorist coverage
11 shall be a rejection on behalf of all parties insured by the policy.
12 Unless the insured named in the policy requests such coverage in
13 writing, such coverage need not be provided in any subsequent
14 policy issued by the same insurer for motor vehicles owned by the
15 named insured, including, but not limited to, supplemental, renewal,
16 reinstated, transferred or substitute policies where the named in-
17 sured had rejected the coverage in connection with a policy pre-
18 viously issued to the insured by the same insurer.

19 (d) Coverage under the policy shall be limited to the extent that
20 the total limits available cannot exceed the highest limits of any
21 single applicable policy, regardless of the number of policies in-
22 volved, persons covered, claims made, vehicles or premiums shown
23 on the policy or premiums paid or vehicles involved in an accident.

24 (e) Any insurer may provide for the exclusion or limitation of
25 coverage:

26 (1) When the insured is occupying or struck by an uninsured
27 automobile or trailer owned or provided for the insured's regular
28 use;

29 (2) when the uninsured automobile is owned by a self-insurer or
30 any governmental entity;

31 (3) when there is no evidence of physical contact with the un-
32 insured motor vehicle and when there is no reliable competent
33 evidence to prove the facts of the accident from a disinterested
34 witness not making claim under the policy;

35 (4) to the extent that *duplicative* workers' compensation benefits
36 apply;

37 (5) when suit is filed against the uninsured motorist without no-
38 tice to the insurance carrier; and

39 (6) to the extent that *duplicative* personal injury protection ben-
40 efits apply.

41 (f) An underinsured motorist coverage insurer shall have sub-
42 rogation rights under the provisions of K.S.A. 40-287 and amend-
43 ments thereto. If a tentative agreement to settle for liability limits

The underinsured motorist coverage obligation shall commence at the level of the other motor vehicle's applicable limit of liability, unless it has been exhausted by payment of multiple claims.

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1 has been reached with an underinsured tortfeasor, written notice
2 must be given by certified mail to the underinsured motorist cov-
3 erage insurer by its insured. Such written notice shall include written
4 documentation of pecuniary losses incurred, including copies of all
5 medical bills and written authorization or a court order to obtain
6 reports from all employers and medical providers. Within 60 days
7 of receipt of this written notice, the underinsured motorist coverage
8 insurer may substitute its payment to the insured for the tentative
9 settlement amount. The underinsured motorist coverage insurer is
10 then subrogated to the insured's right of recovery to the extent of
11 such payment and any settlement under the underinsured motorist
12 coverage. If the underinsured motorist coverage insurer fails to pay
13 the insured the amount of the tentative tort settlement within 60
14 days, the underinsured motorist coverage insurer has no right of
15 subrogation for any amount paid under the underinsured motorist
16 coverage.

17 Sec. 2. K.S.A. 40-287 is hereby amended to read as follows: 40-
18 287. The policy or endorsement affording the coverage specified in
19 K.S.A. 40-284, *and amendments thereto*, may further provide that
20 payment to any person of sums as damages under such coverage
21 *which duplicates sums received as damages* shall operate to subrogate
22 the insurer to any cause of action in tort which such person may
23 have against any other person or organization legally responsible for
24 the bodily injury or death because of which such payment is made,
25 and the insurer shall be subrogated, to the extent of such payment,
26 to the proceeds of any settlement or judgment that may thereafter
27 result from the exercise of any rights of recovery of such person
28 against any person or organization legally responsible for said bodily
29 injury or death for which payment is made by the insurer. Such
30 insurer may enforce such rights in its own name or in the name of
31 the person to whom payment has been made, as their interest may
32 appear, by proper action in any court of competent jurisdiction.

33 ~~Sec. 3. K.S.A. 40-3111 is hereby amended to read as follows:~~
34 ~~40-3111. (a) A physician, hospital, clinic or other person or institution~~
35 ~~lawfully rendering treatment to an injured person for an injury cov-~~
36 ~~ered by personal injury protection benefits and a person or institution~~
37 ~~providing rehabilitative occupational training following the injury;~~
38 ~~may charge a reasonable amount for the products, services and ac-~~
39 ~~commodations rendered. The charge shall not exceed the amount~~
40 ~~the person or institution customarily charges for like products, serv-~~
41 ~~ices and accommodations in cases not involving insurance, and al-~~
42 ~~lowances for medical benefits under this act do not include that~~
43 ~~portion of the charge for a room in any hospital, clinic, convalescent~~

Page 3 of 3

1 ~~or nursing home, extended care facility or any similar facility in~~
2 ~~excess of the reasonable and customary charge for semiprivate ac-~~
3 ~~commodations unless intensive care is medically required.~~

4 ~~(b) An attorney is entitled to a reasonable fee for advising and~~
5 ~~representing a claimant in an action for personal injury protection~~
6 ~~benefits which are overdue. The attorney's fee shall be a charge~~
7 ~~against the insurer or self-insurer in addition to the benefits re-~~
8 ~~covered, if the court finds that the insurer or self-insurer un-~~
9 ~~reasonably refused to pay the claim or unreasonably delayed~~
10 ~~in making proper payment.~~

11 ~~Within the discretion of the court, an insurer or self-insurer may~~
12 ~~be allowed an award of a reasonable sum as attorney's fee, based~~
13 ~~upon actual time expended, and all reasonable costs of suit for its~~
14 ~~defense against a person making claim against such insurer or self-~~
15 ~~insurer where such claim was fraudulent, excessive or frivolous, and~~
16 ~~such attorney's fee and all such reasonable costs of suit so awarded~~
17 ~~may be treated as an offset against any benefits due or to become~~
18 ~~due to such person.~~

19 Sec. 4. K.S.A. 40-287 and 40-3111 and K.S.A. 1990 Supp. 40-
20 284 are hereby repealed.

21 Sec. 5. This act shall take effect and be in force from and after
22 its publication in the statute book.

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11
14

MEMORANDUM

TO: Representative Larry Turnquist
Chairman, House Insurance Committee

FROM: William W. Sneed
Legislative Counsel
State Farm Insurance Companies

DATE: February 28, 1991

RE: House Bill 2126

As you will recall during the hearings on the above-captioned bill on February 19, 1991, you wished for me to provide some information not covered in my remarks. Please accept this memorandum as the additional information that was requested during that hearing.

1. In regard to the multiple accident situation, it is my understanding that the example given by the KTLA is correct with respect to the current state of Kansas law. However, my client, State Farm, voluntarily provides a modified difference in limits coverage to all of its policyholders in Kansas specifically to avoid the inequities incurred when multiple claimants exhaust all of the coverage on a liability policy. For instance, in the example cited by the KTLA, we would compensate an insured for his or her damages from the \$16,666 level up to their policy limits. In other words, the insured would recover a total of \$50,000 if he or she had \$50,000 in UIM coverage, provided that the damages were commensurate with that level.

Attached please find a proposed amendment to K.S.A. 40-284(b). If you believe it appropriate to make this voluntary procedure mandatory, this amendment would incorporate the procedure within the statute by definition of uninsured motor vehicle.

William W. Sneed
Feb. 26, 1991
Attachment 3

2. You also requested to have our position in regard to underinsured motorist coverage as it relates to a perceived concern by the Committee that there may be insureds purchasing insurance thinking they have one type of coverage when in actuality they do not. We believe that the current law in this regard is appropriate, and there is no need for change. If an insured is injured because of the negligence of an uninsured motorist, the insured is entitled to collect the full amount of his or her damages up to the uninsured motorist policy limits. If an insured is injured because of the negligence of any underinsured motorist, the insured may recover the difference between the tortfeasor's liability limits and the underinsured motorist limits, limited, of course, to the extent of damages suffered. "Underinsured" means exactly what the word says; that is, the difference between your policy limits and the tortfeasor's policy limits that causes a difference, or underinsurance, between the two policies. As pointed out in the presentations, after uninsured motorist coverage was added to the law, there was a concern that there would still be those individuals who purchased minimum insurance requirements versus those individuals who purchased higher limits. In order to compensate the difference, it was agreed to include underinsured motorist coverage. We believe it is inappropriate to compare uninsured motorist coverage to underinsured motorist coverages.

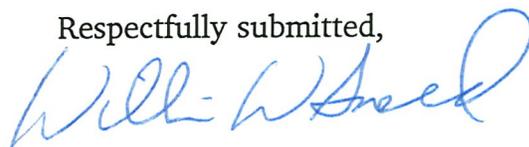
Underinsured motorist coverage was designed and is priced to operate as described above. My client realizes that there is a rare occasion when the full UM limits are used on an underinsured motorist claim; however, the coverage is priced by actual experience. To allow an insured to stack their underinsured motorist coverage on top of the tortfeasor's liability coverage would greatly increase the cost of the UIM coverage

inasmuch as it would give the insured a larger target of benefits. Therefore, we believe it inappropriate to compare current cost factors to the underinsured motorist coverages and make a blanket statement that the cost to Kansas insureds will be minimal. It may be true that the cost in the first year may be minimal, since you will have increased the total amounts available by stacking that would be the potential target of recovery. We see no reason to tamper with provisions that are affordable today and possibly make such provisions unaffordable in the future. Inasmuch as the philosophy of Kansas no-fault law is to provide an affordable product that furnishes "minimum" benefits, we believe it would be improper to expand on the underinsured motorist concept and potentially increase the cost of the product dramatically to the citizens of Kansas.

Therefore, it is still our position that we would oppose any amendment to allow the stacking of underinsured motorist coverages. However, we believe that the attached amendment relative to underinsured motorists would provide a reasonable compromise on this area.

I appreciate your time on this matter, and if you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed
Legislative Counsel
State Farm Insurance Companies

Amendment to K.S.A. 40-284(b)

Add the following language to section 40-284(b):

For the purposes of this section, "underinsured motor vehicle" means a motor vehicle for which there is a bodily injury liability insurance policy, or bond providing equivalent liability protection, in effect at the time of the accident, but the applicable limit of bodily injury liability of such policy or bond:

- (1) is less than the applicable limit for underinsured motorist coverage under the insured's policy; or
- (2) has been reduced by payments to other persons injured in the accident to an amount less than the limit for underinsured motorist coverage under the insured's policy.