

Approved: February 21, 1994
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson William Bryant at 3:30 p.m. on February 15, 1994 in Room 527-S of the Capitol.

All members were present except: Representative Tom Bruns

Committee staff present: William Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: William Sneed, State Farm
Gerald W. Scott, KTLA
Representative Kent Glasscock
Louis LaDuron, insurance agent and cyclist
Roger Harms, LMSW
Bob Alderson, Motorcycle Industry Council
Rick Davis, Kansas Motorcycle Industry Council
Ron Meyers, Shawnee, cyclist

Others attending: See attached list

HEARING ON HB 2833: Auto liability insurance, concerning certain exclusion or limitation of coverage

William Sneed, State Farm, said the proposed amendment to a statute which deals with uninsured and underinsured motorist coverage will correct a problem in multi-car issues that was created based upon a Kansas Supreme Court decision known as the Gilbert Decision (Attachment 1). This amendment would disallow an individual to purchase higher limits on one vehicle and lower limits on a different vehicle and then allow that individual to collect on the higher limit policy. This practice skews the correct pricing of the product and does not further public policy of mandatory automobile insurance. Passage of this bill would eliminate the practice of insurance companies incurring additional costs to ascertain equal policy limits on all vehicles even though insureds wish to purchase different policy limits on different vehicles. The policies would exclude all vehicles not described in the policies.

Gerald W. Scott, representing the Kansas Trial Lawyers Association, explained their opposition to the bill as current law allows exclusion of coverage if an insured is occupying or struck by an uninsured motor vehicle owned by or furnished for the regular use of the insured in order to enforce the law which requires that each vehicle be insured. It does not require each automobile to be insured under the same policy (Attachment 2). Kansas allows the insured to choose coverage under the available insurance policies with the highest limits. KTLA believes this valuable coverage should remain unchanged on the grounds consumers have paid the premium for the policy coverage for the past four decades and should be allowed to continue to make claims on those policies. Uninsured coverage is transitory and cheap, the highest policy benefits can be used but not stacked.

HEARING ON HB 2844: PIP coverage for motorcycles

Representative Kent Glasscock explained that in this bill the opt-out provision in no-fault coverage would be deleted thereby requiring owners of motorcycles to carry personal injury protection (Attachment 3). The minimal coverage, cost, and benefits to the state and the cyclist were reviewed. Because no one is denied medical treatment or rehabilitation services, the state can become the responsible payer for all costs related to a motorcycle accident victim as well as funeral expenses and the ultimate support of the family if they end up on the welfare rolls. The reality is that motorcycle owners are now in essence getting a free motorcycle ride and the rest of us are paying the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on February 15, 1994.

Representative Glasscock was asked to provide the Committee with the following information:

1. How many motorcycles are insured in Kansas?
2. How many motorcycle insureds are opting out of PIP coverage?
3. How much would the price of motorcycle insurance go up if PIP coverage is required?
4. If rates are driven up, would this cause cyclists to drop all insurance?
5. How many motorcycle head injury victims are on SRS or some form of public assistance?

A fiscal note from the Director of the Budget stated that expected premium tax from the proposed PIP requirement would be \$28,476.00 (Attachment 4).

Louis LaDuron, Sr., Leavenworth insurance agent and cyclist, stated that the PIP requirement would double the cost of motorcycle insurance and mandate coverage of \$50,000 for motorcycles for PIP insurance (Attachment 5). Mr. LaDuron stated that the now offered \$4,500 is a ludicrous amount to offer for a head injury. Would the cost of PIP go down if a helmet law is enacted? If this coverage is mandated, a set amount of premium

Roger Harms, LMSW of Wichita, stated that the current mandated coverage for trust and autos is \$4,500 per accident and this bill leap-frogs this amount to \$50,000 for coverage for motorcycles (Attachment 6). Problems with the bill are that the premiums would be very high and non-compliance would be a major issue; uninsured bicyclists would still be a major problem for Medicaid as these injuries and deaths are usually about half of the motorcycle figures in Kansas. Alternatives would be mandated helmet laws; increase the MVA PIP to \$50,000 for medical and change the rehabilitation wording to specifically include medical equipment and rehabilitation treatment, and restrict or revoke motorcycle license privileges for persons convicted of DUI.

Bob Alderson, Motorcycle Industry Council, requested that the bill be reported adversely (Attachment 7). After long consideration, their industry believes that motorcycles should be excluded from no-fault insurance coverage as they were in 1973. The PIP requirement has such an adverse effect on the cost of insurance that it can result in a loss of the insurance market for motorcycles, price ownership of motorcycles out of the reach of most people, or encourage the operation of motorcycles without insurance. Only three states have passed laws requiring that motorcycles be subject to no-fault: Massachusetts, Delaware, and Hawaii. Both Massachusetts and Delaware saw a near collapse of the motorcycle insurance market due to exorbitant premiums and the withdrawal of carriers from the market place. They incorporated provisions for very high dollar and optional deductibles. Hawaii amended their no-fault during the 1985 session to exempt motorcycles. He stated that their Industry Council has not taken a position on the proposed helmet law.

Rick Davis, Kansas Motorcycle Industry Council, stated that the person who can afford PIP insurance will not purchase it because it is of poor value, and the persons who need it can't afford it (Attachment 8). Requiring that PIP insurance coverage be necessary before a title can be transferred from the seller to the owner of the motorcycle will result in a title nightmare.

Ron Meyers of Shawnee, a retiree with seven show bikes, stated that many young people use motorcycles as cheap transportation and the requirement of PIP coverage will eliminate this form of economic transportation. People who own several motorcycles will title them in other states which do not require PIP coverage or not carry coverage at all.

Dick Brock, Insurance Department, presented written testimony only (Attachment 9).

The meeting adjourned at 5:04 p.m. The next meeting is scheduled for February 16, 1994.

GUEST LIST

COMMITTEE:

Gause Fd Q.

DATE:

2-15-94

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MEMORANDUM

TO: The Honorable William F. Bryant, Chairman
House Financial Institutions and Insurance Committee

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

DATE: February 15, 1994

RE: H.B. 2833

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent the State Farm Insurance Companies. Initially, let me thank you for introducing H.B. 2833 at our request. As I stated to the Committee at the time of introduction, H.B. 2833 is an amendment to K.S.A. 40-284. This statute deals with uninsured and underinsured motorist coverage under the Kansas no-fault law. This amendment will correct a problem in multi-car issues that was created based upon the Kansas Supreme Court's decision in *Farmers Insurance Group v. Gilbert*, 14 Kan.App.2d 395, 247 Kan. 598 (1990).

Factually, the case states that Gilbert was insured by Farmers under a separate liability policy for his motorcycle, his van and his automobile. Mr. Gilbert carried uninsured motorist limits on the policies for the van and automobile of \$50,000.00, and the uninsured motorist limit on the motorcycle was only \$25,000.00. Gilbert was serious injured while riding his motorcycle. The driver of the automobile striking the motorcycle had \$25,000.00 in liability insurance. Gilbert was paid the \$25,000.00 liability limits of the striking driver's automobile policy. Gilbert then turned to his own policy for

House F.D.D.
Attachment 1
Feb. 15, 1994

underinsured motorist coverage. Instead of making a claim against the policy on the motorcycle, Gilbert successfully collected underinsured motorist coverage under the higher limit automobile policy. Farmers argued that the coverage under either the automobile or van policy was excluded because Gilbert was riding a vehicle that was not insured under either policy. Gilbert asserted, and the Supreme Court agreed, that the exclusion in the two automobile policies was broader than the exclusion authorized by statute, and therefore unenforceable.

The Kansas courts have stated on numerous occasions that the exclusions authorized by the Kansas statute are to be construed narrowly. The court believed the legislative intent in drafting such a narrow exclusion was apparently limited to preventing persons who have failed to insure their own vehicles from recovering on the policies of others or on policies of their own issued for other vehicles. The court stated in the Gilbert case that the motorcycle owned and operated by Gilbert was insured; thus, the exclusion in the automobile policy would not apply. Therefore, the Supreme Court has stated it will narrowly define exclusions, and only where the legislature has specifically acted on an exclusion will they provide such an interpretation.

We recognize the Supreme Court's historical analysis of the Kansas uninsured motorist coverage law and the exclusions written in the statute. We also understand the public policy behind the Court's rationale in narrowly defining exclusions. However, the outcome in *Gilbert* was not intended when the uninsured motorist law was enacted, and as such we have offered the proposed amendment in H.B. 2833 to correct this decision.

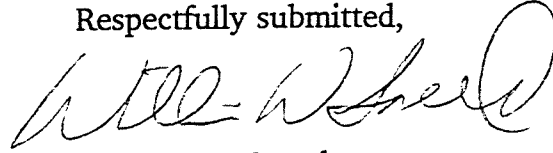
If an individual is injured and does in fact have insurance on that vehicle, it is that policy that the insured should look to for any available uninsured or underinsured coverages. The pricing of the insurance is based on the fact that only one vehicle is insured and could be involved in an accident with an uninsured driver. Under the law as interpreted in *Farmers v. Gilbert*, three of Mr. Gilbert's vehicles could be involved in accidents with uninsured drivers at the same time, and he could legally make three claims under one policy. If the vehicles are insured by different companies, the insurers will be unaware of other cars on the household which may be "covered" under the *Gilbert* law. To allow an individual to purchase higher limits on one vehicle and lower limits on a different vehicle and thereafter allow that individual to collect on the higher limit policy skews the correct pricing of the product and does not further public policy of mandatory automobile insurance.

Additionally, passage of this bill eliminates the requirement that companies are faced with when issuing individual policies on specific automobiles and/or motorcycles. With the *Gilbert* decision, these companies have been forced to incur additional costs to ascertain equal policy limits on all vehicles. Again, we believe this adds additional cost to the system and does not benefit insureds who, for legitimate reasons, wish to purchase different policy limits on different vehicles.

We appreciate the opportunity to present our testimony. Based upon the foregoing, we believe it would be in the public's best interest to pass this proposed amendment. Thus, we respectfully request your favorable action on H.B. 2833.

I appreciate your consideration, and if you have any questions, please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "W. W. Sneed", written in dark ink.

William W. Sneed

MEMORANDUM

TO: Chairman and House Financial Institutions and Insurance
Subcommittee

FROM: Gerald W. Scott Kansas Trial Lawyers Association

DATE: February 15, 1994

RE: House Bill No. 2833

Mr. Chairman, Members of the House Financial Institutions and Insurance Subcommittee:

My name is Gerald W. Scott, a practicing attorney from Wichita, Kansas, appearing on behalf of the Kansas Trial Lawyers Association, to offer testimony on issues relating to uninsured and underinsured coverage as defined in K.S.A. 40-284.

I. HOUSEHOLD EXCLUSION (H.B. 2833, Lines 20-25)

House Bill No. 2833 attempts to reduce current coverage of uninsured and underinsured motorist policies by excluding coverage when the insured is occupying or struck by a vehicle which is owned by or provided for the insured's regular use unless the vehicle is insured under the policy in question. This is called the HOUSEHOLD EXCLUSION. This is an attempt to overturn the Kansas Supreme Court case of Farmers Insurance Company, Inc. v. Gilbert, 247 Kan. 589, 802 P.2d 556 (1990) disallowing the "household exclusion." Gilbert, however, was not new law. The insurance industry had attempted to inject a "household exclusion" in policies in 1973 and 1979; and the Kansas Supreme Court rejected those attempts in Forrester v. State Farm Mutual Automobile Ins. Co., 213 Kan. 442, 517 P.2d 173

(1973), and in Midwest Mutual Ins. Co. v. Farmers Ins. Co., 3 Kan.App.2d 630; 599 P.2d 1021 (1979) at p. 631. Current law allows exclusion of coverage if an insured is occupying or struck by an uninsured motor vehicle owned by or furnished for the regular use of the insured in order to enforce the law which requires that each vehicle be insured, but does not require each automobile to be insured under the same policy. All that is required is that all vehicles be insured. For 21 years, Kansas citizens have successfully resisted a "household exclusion" and have paid a premium for and received uninsured motorist coverage from their policy of insurance with the highest limits of uninsured motorist coverage.

The Kansas insurance industry has not limited its attempts to obtain a "household exclusion" to the courts. It lost an earlier attempt to introduce a "household exclusion" and change long-standing Kansas law when an identical proposed change was presented to the 1991 Legislature in House Bill 2138. At that time, Kansas elected to remain among the 34 states which prohibit the household exclusion --Alabama, Arizona, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Kansas continues to allow the insured to choose coverage under the available insurance policies with the highest limits.

KTLA believes this valuable coverage should remain unchanged on the grounds consumers have paid the premium for the policy coverage for the past four decades and should be allowed to continue to make claims on those policies.

A. PURPOSE OF UNINSURED/UNDERINSURED COVERAGE

Uninsured motorist coverage was first implemented by the Kansas Legislature in 1968 when it enacted K.S.A. 40-284. The Supreme Court specifically addressed the remedial purpose of uninsured motorist coverage by stating:

The purpose of legislation mandating the offer of uninsured motorist coverage is to fill the gap inherent in motor vehicle financial responsibility and compulsory insurance legislation and this coverage is intended to provide recompense to innocent persons who are damaged through the wrongful conduct of motorists, who, because they are uninsured and not financially responsible, cannot be made to respond in damages. As a remedial legislation, it should be liberally construed to provide the intended protection. (Winner v. Ratzlaff, 211 Kan. 59, 63-64, 1973) (Emphasis added)

B. SCOPE OF UNINSURED/UNDERINSURED MOTORIST COVERAGE

Uninsured motorist coverage is first-party insurance, designed to protect the insured. Liability insurance is third-party insurance, designed to protect not the insured, but persons injured by the insured. (Robert Jerry, Dean, KU School of Law, Understanding Insurance Law, 32 Kan.L.Rev. 344, § 13 D(a), (1987).) The uninsured motorist insured need not be an occupant of a motor vehicle. There is no "occupancy" requirement for such a person, only a necessity that bodily injury be produced by an uninsured automobile. The person may be injured while a pedestrian or engaged in any other non-vehicular activity. (11 Am.Jur. Trials. Uninsured Motorist Claims, § 8, p. 91.)

As early as 1970, the Kansas Supreme Court found that uninsured motorist protection provides the named insured with two kinds of coverage: while in his or her insured automobile and wherever else he or she may happen to be when he or she suffers bodily injury due to an uninsured motorist. (Kansas Farm Bureau Ins. Co. v. Cool, 205 Kan. 567, 471 P.2d 352 (1970)).

In 1973, the Kansas Supreme Court stated that "uninsured motorist coverage is not actually liability insurance, but more closely resembles limited accident insurance." (Forrester v. State Farm Mutual Automobile Ins. Co., 213 Kan. 442, 448.)

Uninsured motorist coverage protects the named insured "wherever he may be, whether in the described vehicle, another owned vehicle, a non-owned vehicle, or on foot." (Midwest Mutual Ins. Co. v. Farmers Ins. Co., 3 Kan.App.2d 630 (1979)).

Uninsured motorist coverage is transitory in nature and is not limited to a particular insured vehicle.

The Kansas Court of Appeals has specifically held that an insurance contract provision attempting to exclude uninsured motorist coverage for injuries arising as a result of the named insured occupying a vehicle which is owned by the named insured other than the insured vehicle is a void attempt to dilute the uninsured motorist coverage mandated by K.S.A. 40-284. (Barnett v. Crosby, 5 Kan.App.2d 98, 1980.)

C. STACKING OF COVERAGES

Prior to 1981, the Supreme Court also addressed the issue of "stacking" uninsured motorist policies. First, the Supreme Court held that where the injured insured had two separate policies of

uninsured motorist insurance on each of two motor vehicles owned by the insured that the injured insured could "stack" the uninsured motorist coverage of the two separate policies up to the limit of his damages. (Van Hooser v. Farmers, supra, 597; Simpson v. Farmers Ins. Co., 225 Kan. 508, 511-12.) Then, the court also held that where two vehicles are insured in a single policy with separate premium paid for each vehicle, an injured insured may also "stack" the two uninsured motorist coverages up to the limit of his damages and that a policy provision purporting to prevent such "stacking" was void and unenforceable. (Davis v. Hughes, 229 Kan. 91, 622 P.2d 641 (1980)).

D. LEGISLATIVE COMPROMISE OF 1981

The full legislative history of the 1981 amendment and addition of exclusions to K.S.A. 40-284 is set out in Appendix A attached hereto. The long and short of the 1981 changes is that the Kansas Trial Lawyers Association (KTLA) drafted and submitted proposed legislation to:

1. Raise liability limits of K.S.A. 40-3107 from \$15,000/30,000 to \$25,000/50,000;
2. Introduce underinsured motorist coverage into Kansas law; and
3. Make mandatory the offering of uninsured motorist and underinsured motorist coverage in limits equal to the liability limits.

The insurance industry was very concerned about the court cases concerning "stacking" which allowed an insured to collect on each policy of insurance pyramiding each coverage on top of each other. Three policies of \$25,000, \$25,000, and \$100,000 limits would provide \$150,000 in available benefits.

A compromise between the Kansas Trial Lawyers Association and the insurance lobbyists was reached giving the insurance industry lobbyists the anti-stacking amendment they sought:

"Coverage under the policy shall be limited to the extent that the total limits available cannot exceed the highest limits of any single applicable policy, regardless of the number of policies involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid or vehicles involved." (S.B. 371, Draft #2, S.B. 371) [As Amended by Senate on Final Action.]

but the insurance industry agreed to allow Uninsured/underinsured motorist coverage to apply no matter where the named insured is or what vehicle the named insured is occupying when the named insured is injured, so long as the vehicle was insured under a current policy. The insured could only collect on one policy, but could collect from the policy with the highest limits, subject only to the statutory limitations and exclusions found in K.S.A. 40-284(e)(1)(2)(3)(4)(5) and (6). Under this compromise, three policies of \$25,000, \$25,000, and \$100,000 limits would provide only \$100,000 in available benefits, not \$150,000 as under stacking.

On one hand, the Legislature denied a "free ride" to an individual who is injured while driving or occupying or struck by an uninsured vehicle owned by or furnished for his or her regular use which he or she has failed to insure. On the other hand, the permissible exclusion contained in Subsection (e)(1) is very narrow, inasmuch as it applies only to "uninsured" vehicles, and does not permit insurance companies to exclude or limit uninsured/ underinsured motorist coverage when the insured is occupying or struck by an insured vehicle owned by the insured.

Robert Jerry, Dean of the University of Kansas Law School, has written on this narrow scope of the exclusion contained in K.S.A. 40-284(e)(1) and has reached the following conclusion:

However, earlier Kansas cases in validating exclusions for injuries arising as a result of occupying a vehicle (other than the insured vehicle) owned by the named insured do not seem to be affected by the amendments to § 284, since the amendments only authorize an exclusion for occupying an UNINSURED automobile owned by the insured or provided for the insured's use. (Jerry, 32 Kan.L.Rev. 344.) (Emphasis added.)

E. CONCLUSION -- Household Exclusion

Insurance companies honored the 1981 compromise between the insurance industry and the Kansas Trial Lawyers Association by writing policies with provisions such as that of State Farm Mutual Automobile Insurance Company following the language of K.S.A. 40-284 (e)(1) to the letter and only excluded "uninsured" motor vehicles:

THERE IS NO COVERAGE:

2. For bodily injury sustained by an insured when occupying or struck by a motor vehicle or trailer:
 - a. Owned by you, or
 - b. Furnished for your regular use

and which is not insured.
(State Farm Mut. Auto. Ins. Co. Policy Form 9816.6)

thus providing coverage to insureds for all injuries sustained in other insured vehicles and while pedestrians up to the limits of the highest policy and denying coverage under K.S.A. 40-284(e)(1) to those who violate the law and do not obtain insurance on vehicles.

Insurance companies honored the commitment to extend the highest limits of any policy to an injured insured by writing

provisions such as that of Farmers Insurance Group, which stated:

Other Insurance

4. If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

. . .

6. Two or More Cars Insured

With respect to any accident or occurrence to which this and any other auto policy issued to you by any member company of the Farmers Insurance Group of Companies applies, the total limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

which incorporated the language and meaning of the anti-stacking compromise, and allows coverage under the policy with the highest limits.

The passage of the 1981 amendment to K.S.A. 40-284 was totally dependent upon the specific compromise between KTLA and the insurance industry, resulting in subsection (d) to allow a limited anti-stacking provision, and in exchange, the insurance industry agreed to preserve the right of the insured to recover the highest UM/UIM limit on any of his or her vehicles. For the insurance industry to now attempt to seek law under which an insured is limited to collecting UM or UIM benefits on the lower limits of the vehicle being occupied is to break the promise to allow recovery on "the highest limits of any single applicable policy" and must be disallowed. Premiums are based upon the coverage that Kansans have been purchasing for 40 years, and the 1991 compromise must not be discarded by the passage of time.

II. GOVERNMENT MOTOR VEHICLES EXCLUSION (H.B. 2833, Line 26)

House Bill 2833 also seeks to change K.S.A. 40-284(e)(2) by expanding the current permissible exclusion --

"when the uninsured automobile is owned by a self-insured or any governmental entity,"

to exclude coverage when --

"when the uninsured motor vehicle is owned by a self-insured or any governmental entity."
(H.B. 2833, Line 26-27)

When exclusion (e)(2) was passed in 1991, it was believed to be limited to stating the obvious -- that an automobile which has been approved for "self-insured status" or was owned by a governmental entity should not have "uninsured status" because the "self-insured" or the governmental entity was available to respond with payment of an award of damages against the driver of the automobile. However, experience has shown that this is a much broader exclusion than originally contemplated.

If the self-insured or government automobile is being operated beyond the scope of the authority of the employee of the self-insured or the governmental employer, there is no liability on the employer and the driver is a true uninsured motorist. However, the injured person cannot fall back upon his or her uninsured motorist insurance coverage because of this exclusion. The injured insured is without recourse to recovery damages except from the personal assets of the employee-driver who seldom has assets. The spirit of the uninsured motorist statute is violated.

This unjust result is even more unfair when viewed from the stand-point of underinsured motorist coverage. There is no

justification to exclude "self-insured" or "government" owned vehicles from underinsured motorist coverages. Insurance companies routinely claim that the exclusions of K.S.A. 40-284(e) apply to underinsured motorist coverages as well as uninsured motorist benefits. A person who purchases high limits of underinsured motorist coverage to protect themselves and their family when injured by an underinsured motorist, needs the coverage just as much when the tortfeasor is an underinsured "self-insured" or governmental entity as when the tortfeasor is a private corporation or private individual.

Now, the insurance industry seeks to expand this unequitable exclusion to extend the exclusion to all "motor vehicles" and not just automobiles. I will advise you of a specific accident that shows the justification to reject this portion of H.B. 2833. Mark Sharkey, a resident of Dickinson County purchased a liability insurance policy with \$750,000 limits of coverage. He was struck by a Dickinson County dump truck with \$500,000 single limits liability coverage. Mark Sharkey sustained a severe closed head injury; has incurred over \$150,000.00 in medical expenses; sustained over \$75,000 in personal property damage; and will be in rehabilitation for his head injury for at least twelve months. He has lost his trucking business with lost revenues of over \$12,000.00 per month. His damages far exceed \$500,000.00.

The insurance company insuring Mark Sharkey issued a policy that agreed to pay Mark Sharkey the difference between his limits of underinsured motorist limits and the liability limits of the tortfeasor. Because the Dickinson County dump truck which caused

the injury is not an "automobile," the permissible government exclusion allowed by (e)(2) of the current statute, will not prevent recovery of underinsured motorist benefits if otherwise applicable. This would not be case under the amendment proposed by House Bill 2833.

The Kansas Trial Lawyers Association respectfully requests that House Bill No. 2833 be disapproved by this committee.

Prepared and submitted by:

Gerald W. Scott
on behalf of the
Kansas Trial Lawyers Association

About the author -- Mr. Scott practices law extensively in insurance law and writes and lectures extensively on Uninsured Motorist and Underinsured Motorist Coverages for the Kansas Bar Association, Kansas Trial Lawyers Association, The University of Kansas Law School, various local bar associations, insurance organizations and private professional continuing legal education organizations.

His fifty page treatise on Kansas Uninsured and Underinsured Motorist is a considered to be the "bible" of Kansas Uninsured and Underinsured Motorist law. Mr. Scott co-authored each of the automobile insurance sections of the Kansas Bar Association Annual Survey of Law; has authored a current article on Uninsured and Underinsured Motorist law for the Kansas Bar Association Journal; and is currently co-authoring the Kansas Bar Association Insurance Manual.

APPENDIX A

1981 AMENDMENTS AND ADDITIONS TO K.S.A. 40-284

Even after the Kansas Legislature enacted K.S.A. 40-284 providing for uninsured motorist coverage and the Supreme Court liberally construed the statute to provide the intended protection, four problem areas remained, two of which were identified by the Court of Appeals in the Farmers Ins. Co., Inc. v. Gilbert, supra, opinion:

1. A motorist could reject uninsured motorist coverage.
2. A motorist who chose high levels of liability coverage to indemnify third persons he or she injured was limited in the amount of their own recovery when injured by a motorist insured only up to the minimum amount of liability coverage required by law, \$15,000/\$30,000.
3. A motorist with a high level of liability coverage could only purchase uninsured motorist coverage of \$15,000.00 per person, \$30,000.00 per occurrence, the maximum written by Kansas carriers.
4. Kansas minimums of liability coverage of \$15,000/\$30,000 were inadequately low.

The Kansas Trial Lawyers Association (KTLA) drafted and submitted proposed legislation in response to these problem areas to:

1. Raise liability limits of K.S.A. 40-3107 from \$15,000/30,000 to \$25,000/50,000;
2. Introduce underinsured motorist coverage into Kansas law; and
3. Make mandatory the offering of uninsured motorist and underinsured motorist coverage in limits equal to the liability limits.

The first KTLA objective was submitted as Senate Bill 371 and the second and third objectives were submitted as House Bill 2251. A review of these bills introduced on behalf of KTLA

reveal the legislative history of Senate Bill 371 which eventually amended K.S.A. 40-284 and K.S.A. 40-3107.

The original draft of Senate Bill No. 381, By Committee on Judiciary, "Draft 1" sought to raise K.S.A. 40-3107 limits of liability from 15/30/5 to 25/50/10.

The second draft of Senate Bill No. 371 [As Amended by Senate on Final Action], "Draft 2," amended S.B. 371 adding the KTLA proposed changes to K.S.A. 40-284 by mandating the offer of underinsured motorist coverage equal to the liability limits and included anti-stacking amendments as presently set out in K.S.A. 40-284(d), but was not broken down in subsections.

This second draft of Senate Bill No. 371, was a compromise between the Kansas Trial Lawyers Association and the insurance lobbyists giving KTLA their sought-after changes and giving the insurance industry lobbyists the anti-stacking amendment they sought. By compromise between KTLA and the insurance industry lobbyists, S.B. 371 now contained anti-stacking language:

"Coverage under the policy shall be limited to the extent that the total limits available cannot exceed the highest limits of any single applicable policy, regardless of the number of policies involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid or vehicles involved." (S.B. 371, Draft #2, S.B. 371) [As Amended by Senate on Final Action.]

and the insurance industry agreed to allow Uninsured/underinsured motorist coverage to apply no matter where the named insured is or what vehicle the named insured is occupying when the named insured is injured, so long as the vehicle was insured under a current policy. The insured could only collect on one policy, but could collect from the policy with the highest limits.

The third draft of S.B. 371, As Amended by House Committee, "Draft 3," contained the same elements but broke K.S.A. 40-284 into sections (a), (b), (c), and (d) as it exists today.

The final Senate Bill No. 371, [As Amended by House Committee of the Whole], "Draft 4," contains an amendment presented by Rep. Hoy on the House Floor. S.B. 371 as amended by the House Committee of the Whole was then passed by the Senate and signed into law by Governor Carlin.

KENT GLASSCOCK

1921 CRESCENT
MANHATTAN, KANSAS 66502
(913) 537-9156STATE CAPITOL, ROOM 174-W
TOPEKA, KS 66612-1504
(913) 296-7642

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: TAXATION
MEMBER: APPROPRIATIONS
JOINT COMMITTEE ON PENSIONS,
INVESTMENTS & BENEFITS

TESTIMONY HB 2844
HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
February 15, 1994

Mr. Chairman and members of the committee, twenty years ago the state of Kansas put in place what proved to be a highly successful system of no-fault automobile insurance. At that time, the no-fault coverage was only partially applied to motorcyclists who were provided an "opt-out" provision relative to Personal Injury Protection. The rationale for this exclusion was an assumption that the cost of PIP coverage would be greater than the value of the motorcycle, thereby negating its perceived benefit. At the time, with medical expenses low, there was no excessive resultant costs to taxpayers -- either direct or indirect. According to legislative research staff, there have been few if any attempts to alter this policy over the years.

The change in the law anticipated by HB 2844 is simple -- the opt-out provision would be deleted thereby requiring owners of motorcycles to carry PIP coverage. This coverage, although admittedly quite minimal, would include:

- ◆ Disability benefits of at least \$900 per month for a period not to exceed one year.
- ◆ Medical benefits of not less than \$4500
- ◆ Rehabilitation benefits of not less than \$4500
- ◆ Survivor's benefits of \$900 per month for a period not to exceed one year.
- ◆ Substitution benefits of \$25 per day for one year.

House FID
Attachment 3
Feb. 15, 1994

- ◆ Funeral benefits not to exceed \$2000.

There are three obvious questions to be asked relative to this proposed legislation. The first is, "At what cost can this coverage be obtained?". The second, "What benefit will accrue to the state for requiring this coverage?". The final question should certainly be, "To what extent will motorcycle owners benefit?".

"What's the cost?" The Insurance Services Office is a licensed rating organization that files rates on behalf of a number of insurers. This office has stated that the PIP rates are from \$84 to \$237 annually, depending on the size of the motorcycle. According to this same organization, the rates would double for those in the Kansas City Metropolitan Area. As you can see from the classified ads from this Sunday's *Kansas City Star*, these rates are not greater than the cost of the motorcycles involved.

"How will the state benefit?" Generally, the state will benefit by a reduction in taxpayer funded services and by fewer services being provided by "cost shifting" to those who carry medical insurance. Currently, those motorcycle owners who are uninsured become a financial liability when they access the health care system after an accident. This happens in two ways. The uninsured and unreimbursed care given by doctors and hospitals effectively becomes a cost shifted "tax" on those of us who **are** insured. The amount of this "tax" cannot be effectively estimated.

Many times, however, a more direct link to the Kansas taxpayer is established. The care of the seriously injured who are uninsured is often-times borne by the state through SRS services. This extension of state funded services occurs through budgets dedicated to acute medical, long-term medical, rehabilitation, and burial assistance, as well as a host of others. Although the agency doesn't keep separate cause of injury data for those accessing taxpayer dollars through state services, let me simply point out the impact of a **single** incident resulting in long-term institutional care or death.

Each head-injury victim requiring institutional care (which the vast majority do) costs the taxpayers \$92,520 according to legislative research. This is an **annual**

cost. Many victims are in need of care for the remainder of their lives. If the injury results in death, the state reimburses funeral homes up to \$1200 for burial expenses.

These are just two of the many services that the taxpayers of Kansas fund for those who are uninsured and without resources. Because SRS has no delineation as to cause of injury in its extension of services, we have no idea what the total cost for motorcycle victims and their families actually is each year.

"What's the benefit to motorcycle owners?" Frankly, it is minimal. The fact is that in our society, no one is denied medical treatment or rehabilitation services. Further, if the worst would happen, the state will pay the funeral expenses for those whose families are without resources or do not care to pay. The only real benefits actually accrue to the family of the injured party in the form of substitution benefits -- allowances for necessary services the injured party would have normally performed for his/her family -- and survivor benefits. The reality is that motorcycle owners are now in essence getting a free motorcycle ride and the rest of us are paying the bill.

Mr. Chairman, this is a simple bill which, in truth, doesn't fully solve anything. I offer it on behalf of the taxpayers and health insurance purchasers of this state who could stand a little relief. And that's all this bill will grant -- a little relief from the astronomical costs associated with serious traffic injury. The cost of coverage is not cheap. I do not deny that. But the cost of the current "opting-out" provision to the people of Kansas is also not cheap. The question therefore becomes where should the responsibility rest, with the taxpayer and insurance purchaser or the motorcycle owner. I believe it should be the latter.

If this bill becomes law, then those motorcycle owners who are injured and without health insurance protection will have at least a little stop-gap funding for themselves and their families in meeting the expenses of their injuries. At the same time, the Kansas taxpayers and health insurance purchasers will have a short respite before being asked to fund the balance of those expenses.

Mr. Chairman, I would stand for questions.

Motorcycles Accessories & Parts 1250

BMW-1992 K75, 2000 mi, 341-0461
HARLEY 1950-1990 quick \$9 822-7889 444-6080
HARLEY 1980 FLH Classic full dress, lots of extras /chrome \$9000 596-1246
HARLEY-1984 FLHS, 1 of 500, Belt drive, 15,000 orig mi, \$9895 obo 913-727-6372
HARLEY-1989 softail springer, 7K miles, \$13,000, 82 Harley FXR \$7500, 316-431-2581
HARLEY-1994 FLHC full dress, black, 200 mi, \$15,500, 913-232-1080 eves
HARLEY-1994 Sportster, black, less than 300 mi, factory warranty, \$7800, 836-1160
Harley Davidson 1964 XLH with extra parts original \$2800 314-796-3650
HARLEY DAVIDSON-1975 Sportster, lots of new, 316-767-7149
Harley Davidson 1977 FLH 1200cc, lots of chrome \$8250, 417-866-8539 or 862-8845
HARLEY DAVIDSON-1982 Sportster, \$4500, 436-4251 looks brand new, 792-0579
Harley Davidson 1985 Electric Glide Classic, 10,000 mi, very go cond, 816-665-0219 leave message, \$9400 obo
HARLEY Davidson 1989 Springer softtail 524-9695
Harley Davidson-1992 Fat Boy 2700mi-trade for Corvette \$14,500, 913-782-4987
HARLEY DAVIDSON 1993 Deluxe Black Sportster lots of extras, \$6350 681-1343 or 781-7107

HARLEY DAVIDSON SHOW & SWAP

Sunday, Feb. 27, 10am-5pm
Veterans Memorial Auditorium, downtown Des Moines, Iowa, Trophies, Prizes and Cash!
BUY-SELL-TRADE
For show entry or dealer info:

Encore Events
(913) 841-4346
10a.m.-5p.m. M-F

HARLEY Hauler 1993 Well Cargo cycle wagon 6x10, side door, extras, new cond, \$1995, 913-681-6782

Harley, loan money on your Harley or buy, 931-1188

Harley, loan money on your motorcycle, 931-1188

HARLEY-Wanted, any year, model or condition. Top \$5 331-4822, leave message

HONDA 1963 Dream 300 excellent cond, runs good, white new seat, extra parts, \$750.obo, 913-448-2511

HONDA 1978 Hawk, 400cc, needs some work, \$500 obo 441-0989

HONDA-1981 1100 Galax, 29,300 miles, many extras, 1989 Cyclamate 200 trailer, 816-496-2424

HONDA 1985 XR200R, runs & lks great \$950obo 796-5818

HONDA-1987 Rebel, new cond, 341-0461

HONDA 1991 CR500, Race Tech, fully modified, Pro tapers, 913-962-2106

HONDA-1992 CR250, exc cond, \$2600, 816-628-6922

HONDA-1993 CR125, less than 15 hrs, extras, 381-3237

HONDA-1994 VF750 \$5779, Honda '94 Trx 300 4x4 \$4299, Come ride with us, We Deliver 402-729-2294

INDOOR SWAP MEET
Feb 20/94, 252-7322, 252-8102

KAWASAKI-1976 900 runs & looks nice \$700 432-2785

KAWASAKI 1980 Z1R 1000, \$1500 firm, Over \$3000 invested, 436-1577

KAWASAKI-1987 Concours, new cond, low mi, 341-0461

KAWASAKI 1989 Ninja 600R, \$2500 obo, 913-537-1464

Kawasaki 1991 KX125, like new, \$1800 obo, 830-1700

KAWASAKI 1991 KX250, exc cond, Pro taper, PSI, Ren-thal, Boysen, \$2800 224-3645

KAWASAKI-1992 EX500, just like new, only 1958 miles, \$2995

Saturn Blue Springs

224-5511

Kawasaki 1992 Ninja ZX-7 750 green 4K mi, extras getting married, must sell, 816-796-5936

KAWASAKI-1993 KX125, KX250 1986 KDX200, will trade for 1992 or newer KDX200 767-0384

MOTORCYCLE SALES
No exp. necess. FT/PT.

WILL TRAIN Freedom Cycles 761-5521

SUZUKI-1979 550 GSL, must sell, going to college, \$750 obo, Call 254-1006

SUZUKI-1979 GS750E, comp w/4-1 header, no title, \$200, Don 471-0706

SUZUKI-1987 DR125 dirt bike good cond many new parts, must see 816-259-3836 or 259-3006

SUZUKI-1990, RM125, excellent condition, many extras, 358-6942

SUZUKI-1991 RM125 EC \$1400 obo, 228-8362

SUZUKI-1992, RM125, like brand new, \$2300, 373-1352

SUZUKI-1993 DS80, full face helmet & gloves, like new, \$1350, 987-6181

SUZUKI 1993 RM125 low hrs, \$2600, RM250 low hrs, \$3500, 987-2245 or 987-5769

SUZUKI-1994 RM80, many extras, must sell - quit racing, \$1950, 913-856-6407

SUZUKI SALE
33% OFF 33% OFF
parts/accessory exp 2/18

FREEDOM 761-2220

Triumph '72 Daytona orig, except paint unassembled \$500; '76 Bonneville orig, no title \$300 816-232-1857

YAMAHA-1971 DT 250 Enduro w/svc manual, needs work, \$200, Don 471-0706

YAMAHA-1981 YZ250 needs motor \$100 432-2785

Yamaha 1983 Birago 500 only 790 orig. mi 587-6789

YAMAHA-1985, RZ350, Kenny Roberts, looks new, \$1800, 452-5966

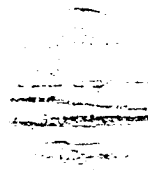
YAMAHA-1989 XT350, low 1200 mi, 1 owner, asking \$2000, 816-776-8381

YAMAHA 1989 YZ125, rebuilt mtr, sleeved cyl, on standard bore, Great shape \$1500 913-271-1024

YAMAHA-1993 Virago 750cc, \$4500, 661-0574

YAMAHA-New, Blaster, 4 Wheeler, less than 10 hrs 1st \$2500 buys. 532-3934

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer
Director

February 15, 1994

The Honorable William Bryant, Chairperson
House Committee on Financial Institutions and Insurance
Statehouse, Room 112-S
Topeka, Kansas 66612

Dear Representative Bryant:

SUBJECT: Fiscal Note for HB 2844 by Representatives
Glasscock, et al.

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 2844 is respectfully submitted to your committee.

HB 2844 would amend the Kansas Automobile Injury Reparations
Act by mandating personal injury protection insurance for owners
of motorcycles. Currently, an motorcycle owner can reject personal
injury protection insurance. The bill would also amend provisions
in current law concerning assigned claims plans to remove language
which excludes personal injury protection (P.I.P.) coverage for
motorcycles.

Estimated State Fiscal Impact				
	FY 1994 SGF	FY 1994 All Funds	FY 1995 SGF	FY 1995 All Funds
Revenue	--	--	\$28,476	\$28,476
Expenditure	--	--	--	--
FTE Pos.	--	--	--	--

Passage of HB 2844 would not impact state expenditures but
would increase the amount of premium taxes deposited in the State
General Fund. The Insurance Department reports that HB 2844 could
potentially increase State General Fund revenues by \$28,476 above
the amounts included in the FY 1995 Governor's Budget Report.

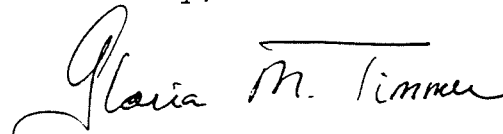
Harve J. D.
Attachment 4
2-15-94

The Honorable William Bryant, Chairperson
February 15, 1994
Page 2

Although this bill would increase the number of P.I.P. policy forms and rates submitted to the Insurance Department for review, the Department indicates that the increased workload could be absorbed.

The Insurance Department reports that for calendar year 1992, the actual amount of premium tax received from motorcycle P.I.P. coverage was \$3,164. The Department speculates that this amount represents approximately 10.0 percent of the total premium tax possible under HB 2844. Therefore, if \$3,164 is multiplied by a factor of nine, the estimated increase in premium tax under the bill is \$28,476. Although calendar year totals were used, the monthly flow of premium tax into the State General Fund is consistent enough to assume that FY 1995 receipts would increase by \$28,476.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".

Gloria M. Timmer
Director of the Budget

cc: Dick Brock, Insurance Department

2844.fn

2-15-94

Committee Members
House Bills 2833, 2844

RON MYERS &
Louis D. LaDuron Sr
720 Shawnee
Leavenworth, Ks 66048

Dear Committee Members:

Being a Chapter Director for the Gold Wing Touring Asso. (GWTA), and a member of the American Motor Cycle Asso. (AMA) and an Insurance Agent in the state of Kansas, plus an avid Motor Cyclist I feel that PIP would be advantages for all Motor Cyclists to have, even though this state would be the only state with mandatory PIP.

I feel that if this is mandated, a set amount of premium should be set such as, not to exceed \$10 to \$15 dollers per year. The rates charged now make it prohibitive for people riding Motor Cycles to purchase it with out undue hardship to themselves and there families.

I belive your intent on this matter is a valid one but cost MUST be an overriding factor and concern of this committee.

SINCERELY

Louis D. LaDuron Sr.

Louis F. D. D
Attachment 5
Feb. 15, 1994

Submitted in testimony before Kansas House of Representatives Committee February 15, 1994
by Roger D. Harms LMSW

House Bill 2844:

--provides that PIP coverage (medical costs, funeral costs, wage replacement costs, rehab costs) now be mandated for motorcycles. It should be stated that the current mandated coverage for trucks and autos is \$4,500 per accident. This bill leap-frogs this amount by mandating \$50,000 of coverage for motorcycles.

Current motor vehicle accident insurance problems:

- 1) motorcyclists are allowed to waive PIP coverage and they most often do.
- 2) nearly all serious motorcycle injuries result in eligibility for State of Kansas-paid Medicaid and related family support costs (AFDC).
- 3) the lack of a universally mandated helmet law assures that the State of Kansas pays out far more for trauma care for cyclists than other states.
- 4) recently imposed State of Kansas caps on medical and rehab care has saved some money for the taxpayer, but has turned more hospitals into welfare agencies. (The bill for the "free care" given to any seriously injured person is passed along to businesses and individuals who have insurance through cost-shifting. This has become much worse since the 10-1-94 XIX capitations.)
- 5) current "rehabilitation" funds from auto PIP resources are often NOT available due to an injured person because the law (40-3103r) is interpreted as covering only job training. (Kansas-based insurance companies or those familiar with our insurance commission use this narrow interpretation.) Out-of-state companies read the words "rehabilitation benefits" and readily pay for therapy, wheelchairs, ramps, etc.

Problems with proposed bill 2844:

- 1) the premiums would be very high and non-compliance would be a major issue. I seriously doubt that money would be saved for the State by reducing XIX. (I have checked on coverage for my own small cycle and with a perfect driving record, my insurance would triple from \$60 a year to \$180.)
- 2) uninsured bicyclists would still be a major problem for Medicaid. Bicycle injuries and deaths are usually about half of the motorcycle figures according to the Kansas Highway Patrol.

Cheaper and better (politically salable) alternatives:

- 1) mandated helmet laws save lives and money for individuals, insurance companies, and state governments. This is a fact that is disputed only by anti-helmet "nuts" who are capable of dismissing the safety concerns and conclusions of all sanctioned sporting and racing activities as far back as 1920 (football and motor vehicle racing). I have submitted numerous medical studies

*House File 2
Attachment 6
Feb. 15, 1994*

to Representative Glasscock outlining the loss of revenue to states, including Kansas, who have repealed universal helmet use laws for motorcycles.

2) since far more auto accidents than motorcycle accidents result in new XIX cases, increase the MVA PIP to \$50,000 (medical) and change the rehabilitation wording to specifically include medical equipment and rehabilitation treatment. Colorado has experience with this exact arrangement, with reduced Medicaid outlays, and very modest insurance increases to motorists.

3) restrict or revoke motorcycle license privileges for persons convicted of DUI. Through my motorcycle contacts, I have been impressed by the fact that motorcycles are very attractive to problem drivers who have numerous violations and whose auto insurance rates have become unbearable.

Thank you for the opportunity to give testimony. I have seen hundreds of severe motor vehicle accident injuries at a major Wichita hospital. I have had ample opportunity to compare insurance coverage from Canada to Mexico and Colorado to Connecticut (at the crossroads of the nation, we see them from everywhere). Our current system can be improved, and I, like you do not want to break the motorcycle industry, the insurance industry, or the taxpayer. For now, a mandatory helmet law is the cheapest, the best, and the easiest to enforce alternative.

A handwritten signature in black ink, appearing to read "RD Harms", with a long, sweeping horizontal line extending to the right.

Roger D. Harms LMSW
2019 Joann
Wichita, Kansas 67203

ALDERSON, ALDERSON, MONTGOMERY & NEWBERY

ATTORNEYS AT LAW

2101 S.W. 21ST STREET

P.O. BOX 237

TOPEKA, KANSAS 66601-0237

W. ROBERT ALDERSON, JR.

ALAN F. ALDERSON

STEVEN C. MONTGOMERY

D. DAVID NEWBERY

JOSEPH M. WEILER

JOHN E. JANDERA

DARIN M. CONKLIN

DANIEL W. CROW

TELEPHONE:

(913) 232-0753

FAX

(913) 232-1866

OF COUNSEL

DANIEL B. BAILEY

MEMORANDUM

TO: House Committee on Financial Institutions and Insurance

FROM: Bob Alderson, Legislative Counsel for Motorcycle Industry Council

RE: House Bill No. 2844 -- PIP Coverage for Motorcycles

DATE: February 15, 1994

The Motorcycle Industry Council is a nonprofit, national trade association which represents manufacturers and distributors of motorcycles and suppliers of related products and services. The Council has been concerned about the impact of "no-fault" insurance on motorcycle owners since the first such law was enacted in 1970. After studying the cost and benefits of such legislation, we reached the conclusion that motorcycles should be excluded from no-fault insurance coverage.

That same conclusion was reached by the 1973 Kansas Legislature when it excluded motorcycles from mandatory PIP coverage in the original no-fault legislation. That conclusion remains as valid today as it was in 1973.

Experience has demonstrated that the inclusion of motorcycles in any no-fault program, even one of limited scope, has such an adverse effect on the cost of insurance (much more so than for other vehicles) that it can result in a loss of the

*House FLD
Attachment 7
Feb. 15, 1994*

insurance market for motorcycles, price motorcycle ownership out of the reach of most persons or in fact encourage operation of motorcycles with no insurance coverage at all. For these reasons the Council believes that motorcycles should continue to be excluded from mandatory no-fault programs. While there may exist quite compelling reasons for the application of a no-fault reparation system to private passenger automobiles, the reasons for including motorcycles under no-fault are not nearly as compelling.

Prior to no fault, and in states which do not have no-fault,
private passenger automobile owners have historically
protected themselves and the occupants of their cars through
the purchase of medical payments coverage under automobile
liability insurance policies. Premiums for such coverage were
and continue to be, for the most part, within one's ability to
pay. Motorcyclists, on the other hand, have traditionally
been unable to purchase medical payments insurance, either
because the coverage has not been available in the marketplace
or because the cost of such insurance has been sufficiently
high to be beyond either willingness or ability to pay. The
no-fault concept of reparations has not altered this
situation.

A large segment of our population today is completely dependent upon automotive transportation to conduct daily business. It is, therefore, entirely logical that no-fault

insurance should be concerned primarily with the automobile problem, because of the huge numbers involved and the high average daily automobile accident rate, coupled with the widespread litigation and swollen court calendars which follow. Motorcyclists, in contrast, use their motorcycles to a degree for basic transportation, but generally more so for pleasure or sporting purposes. In addition, motorcycles are ridden both on and off public highways.

Much of the thrust behind no-fault and other legislative proposals to revise the automobile accident reparations system stems from the economic losses suffered by individuals arising almost entirely out of the ownership and operation of private passenger automobiles and the shortcomings of the judicial system. Motorcycles have never been the basis of the various movements for change in the system of reparations. There is no evidence that motorcycle insurance specialists do not have an excellent record in the disposition of liability claims and suits or that motorcycle cases are choking the courts. There is evidence, however, that under no-fault, motorcyclists suffer increases in insurance costs between 200-300 percent over the coverage previously carried. The Council believes this would likely result from the passage of HB 2844.

Passage of HB 2844 would thrust upon the motorcyclist a responsibility to purchase insurance intended essentially to remedy ills having application for the most part to

automobiles only. HB 2844 equates the motorcycle with the automobile despite the obvious differences between the two, not only in physical characteristics, but also as to hazards to which each is exposed. It also totally disregards accommodations made under the present tort system that maintains an insurance market for motorcycles at reasonable premium rates.

Of the approximately twenty-three states that have enacted some form of no-fault reparation system, twenty recognized at the outset the unique character of motorcycles and the economic problem of motorcyclists and provided that they be exempted or excluded from the mandatory first party indemnity provisions or only optionally included in the law. Only three states -- Massachusetts, Delaware and Hawaii -- passed laws requiring that motorcycles be subject to no-fault.

*Massachusetts
first insurance
business in the
state*

Massachusetts and Delaware were the first two states to enact no-fault legislation and Hawaii was among the last. The immediate though not unforeseen consequence in both Massachusetts and Delaware was a near collapse of the motorcycle insurance market due to exorbitantly high premium costs and the withdrawal of carriers from the marketplace, making motorcycle insurance either prohibitively expensive or unavailable. A workable solution, although perhaps not the best, was found by incorporating provisions for very high

dollar and optional deductibles, which achieved affordability through reduced coverage benefit.

The Hawaii law attempted to address the situation differently by providing for a \$3,000 deductible for motorcycles and apportioning the allocation of burden in accidents involving motor vehicles with four or more wheels and motor vehicles with less than four wheels. This approach, although unique among no-fault statutes, also failed to provide the insurance affordability required. The Hawaii legislature, in recognition of the problem, amended that state's no-fault law during the 1985 session to exempt motorcycles.

In enacting no-fault legislation in Kansas more than 20 years ago, the Kansas Legislature recognized the propriety of excluding motorcycles from the mandated PIP coverage. The Council is not aware of any change in circumstances that would warrant a reversal of that decision. Accordingly, we would respectfully request that HB 2844 be reported adversely.

Thank you for your attention to these remarks. If we can provide you with additional information or materials concerning this matter, please do not hesitate to contact us.

STANDARD MOTORCYCLE PROGRAM KANSAS

TERRITORY 0 — Remainder of State
TERRITORY 1 — Only Wyandotte County



UNIVERSAL UNDERWRITERS INSURANCE COMPANY
Recreational Products Insurance
REPRESENTED BY INDEPENDENT AGENTS
WINTER QUARTERS PREMIUMS
EFFECTIVE 4-1-93

Liability Only

Personal Injury Protection

Bodily Injury & Property Damage 25/50/10, Uninsured/Underinsured Motorists (Bodily Injury) 25/50 and Guest Coverage 25/50

CC SIZE	TERRITORY 0			TERRITORY 1		
	AGE OF YOUNGEST OPERATOR			AGE OF YOUNGEST OPERATOR		
	28 & Over	22 thru 27	21 & Under	28 & Over	22 thru 27	21 & Under
0 - 125	34	50	90	39	59	108
126 - 300	46	69	128	53	82	154
301 - 400	52	81	152	60	93	176
401 - 550	65	102	194	77	123	236
551 - 750	73	115	220	84	133	256
751 - 1250	77	122	234	91	144	278
1251 & Over	84	132	254	95	153	296

CC SIZE	ADDITIONAL PREMIUM
0 - 125	84
126 - 300	130
301 - 400	147
401 - 550	191
551 - 750	204
751 - 1250	237
1251 & Over	248

Increased Limits Liability (Additional Premium)

	AGE OF YOUNGEST OPERATOR		
	28 & Over	22 thru 27	21 & Under
50/100/25	19	32	64
100/300/25	46	77	154

Package Coverage

Bodily Injury & Property Damage 25/50/10, Uninsured/Underinsured Motorists (Bodily Injury) 25/50, Guest Coverage 25/50, Comprehensive, Fire, Theft and Collision

CC SIZE		RATES ARE BASED ON AGE OF YOUNGEST OPERATOR IN HOUSEHOLD																	
		TERRITORY 0									TERRITORY 1								
		28 & Over			22 thru 27			21 & Under			28 & Over			22 thru 27			21 & Under		
		New	Age 1-2	Age 3	New	Age 1-2	Age 3	New	Age 1-2	Age 3	New	Age 1-2	Age 3	New	Age 1-2	Age 3	New	Age 1-2	Age 3
0 - 125	\$150	78	70	64	122	110	98	234	210	186	99	91	77	155	141	121	300	272	232
126 - 300	\$250	132	118	102	205	185	157	400	360	304	167	151	127	266	240	202	522	470	394
301 - 400	\$250	166	150	126	265	239	201	520	468	392	214	190	160	341	303	253	672	596	496
401 - 550	\$250	215	191	163	344	308	258	678	606	506	281	249	209	451	401	335	892	792	660
551 - 750	\$250	271	243	203	435	387	323	860	764	636	352	312	258	565	501	413	1120	992	816
751 - 975	\$250	331	293	243	532	470	388	1054	930	766	435	383	315	698	616	504	1386	1222	998
976 - 1000	\$250	421	369	299	674	592	480	1338	1174	950	553	485	391	890	778	628	1770	1546	1246
1001 - 1250	\$250	487	425	345	782	682	552	1554	1354	1094	643	561	451	1034	902	722	2058	1794	1434
1251 & Over	\$250	520	454	368	836	730	590	1662	1450	1170	685	595	479	1103	959	771	2196	1908	1532

ACCESSORIES AND NON-STANDARD EQUIPMENT COVERAGE

- A. Coverage not to exceed \$7,500.
- B. Radios, CB's or sound equipment not permanently bolted into the fairing are **INELIGIBLE**.
- C. Customized paint and chroming combined not to exceed \$1,000 value.
- D. Coverage subject to applicable deductible for Physical Damage Coverage.

ROUND TO NEAREST \$100 VALUE

28 & Over	22 — 27	21 & Under
\$8 per \$100 value	\$13 per \$100 value	\$26 per \$100 value

New cycles are described as current year or future year models.

Age 1—2 are cycles of the first and second preceding model year.

Age 3 are all cycles that are three years old or older.

Household

POLICY IS SUBJECT TO A NON-REFUNDABLE MINIMUM PREMIUM OF \$30.00 *Attachment B*



Universal Underwriters Insurance Company

UU 4449 (4/93)

Feb. 15, 1994

SF T BIKE/SPECIAL HAZARD PROGRAM

KANSAS

TERRITORY 0 — Remainder of State

TERRITORY 1 — Only Wyandotte county

UNIVERSAL UNDERWRITERS INSURANCE CO. **Recreational Products Insurance** NY
 REPRESENTED BY INDEPENDENT, **ion**
WINTER QUARTERS PREMIUMS
 EFFECTIVE 4-1-93

Liability Only

Bodily Injury & Property Damage 25/50/10, Uninsured/Underinsured Motorists (Bodily Injury) 25/50 and Guest Coverage 25/50

CC SIZE	TERRITORY 0		TERRITORY 1	
	AGE OF YOUNGEST OPERATOR		AGE OF YOUNGEST OPERATOR	
	28 & Over	22 thru 27	28 & Over	22 thru 27
0 - 125	111	163	128	193
126 - 300	150	225	173	267
301 - 400	170	264	196	303
401 - 550	212	332	251	400
551 - 750	238	375	274	433
751 - 1250	251	397	296	469
1251 & Over	274	430	309	498

Personal Injury Protection

CC SIZE	ADDITIONAL PREMIUM
0 - 125	273
126 - 300	423
301 - 400	478
401 - 550	621
551 - 750	663
751 - 1250	770
1251 & Over	806

Package Coverage

Bodily Injury & Property Damage 25/50/10, Uninsured/Underinsured Motorists (Bodily Injury) 25/50, Guest Coverage 25/50, Comprehensive, Fire, Theft and Collision

CC SIZE		RATES ARE BASED ON AGE OF YOUNGEST OPERATOR IN HOUSEHOLD											
		TERRITORY 0						TERRITORY 1					
		28 & Over			22 thru 27			28 & Over			22 thru 27		
		New	Age 1—2	Age 3	New	Age 1—2	Age 3	New	Age 1—2	Age 3	New	Age 1—2	Age 3
0 - 125	\$150	255	229	209	397	359	319	324	296	252	505	461	395
126 - 300	\$250	430	384	332	669	603	513	545	491	413	867	781	657
301 - 400	\$250	542	488	410	862	778	654	696	618	522	1109	985	823
401 - 550	\$250	700	622	530	1120	1002	838	913	811	679	1466	1304	1090
551 - 750	\$250	882	790	662	1417	1261	1051	1144	1016	840	1837	1631	1343
751 - 975	\$250	1077	953	791	1731	1529	1263	1414	1246	1024	2269	2003	1641
976 - 1000	\$250	1369	1201	973	2191	1925	1561	1798	1578	1272	2895	2529	2041
1001 - 1250	\$250	1585	1383	1123	2543	2219	1795	2090	1824	1468	3363	2933	2347
1251 & Over	\$250	1690	1478	1196	2718	2374	1918	2227	1935	1557	3586	3118	2508

ACCESSORIES AND NON-STANDARD EQUIPMENT COVERAGE

- A. Coverage not to exceed \$7,500.
- B. Radios, CB's or sound equipment not permanently bolted into the fairing are **INELIGIBLE**.
- C. Customized paint and chroming combined not to exceed \$1,000 value.
- D. Coverage subject to applicable deductible for Physical Damage Coverage.

ROUND TO NEAREST \$100 VALUE

28 & Over

\$8 per \$100 value

22 — 27

\$13 per \$100 value

New cycles are described as current year or future year models.

Age 1—2 are cycles of the first and second preceding model year.

Age 3 are all cycles that are three years old or older.

POLICY IS SUBJECT TO A NON-REFUNDABLE MINIMUM PREMIUM OF \$30.00

8-2
UU 2545 (4/93)



Universal Underwriters Insurance Company

Testimony on
House Bill No. 2844
by
Dick Brock
Kansas Insurance Department

House Bill No. 2844 would remove the ability of motorcycle owners to reject the purchase of personal injury protection benefits. This provision was included in the original "no-fault" automobile liability insurance law enacted in 1973 that became effective January 1, 1974. This original law was a cooperative effort between the Governor's office, the Insurance Department and the Legislature and, based on the information presented by motorcycle dealers across the state at that time, there was no disagreement on this issue. Even when the legislation was in its formative stages, the cost implications of requiring the purchase of personal injury protection benefits by motorcycle owners was determined to be an unnecessary ingredient in relation to the overall goal of enacting a meaningful no-fault law.

As some of you may recall, that original legislation was found to be unconstitutional by the District Court but the decision was stayed pending an appeal to the Kansas Supreme Court. In the interim, corrective legislation was developed which addressed the constitutional defects identified by the District Court. The ultimate decision of the Supreme Court was that the original law was not unconstitutional and, further, that the remedial legislation which became effective February 22, 1974, was not unconstitutional for any of the reasons originally cited. I note this because, among a number of other contentions, the original challenge argued that allowing owners of motorcycles to reject personal injury protection benefits granted them special privileges and immunities thereby creating an arbitrary classification not reasonably related to any legitimate purpose of the no-fault law. A majority of the court rejected this argument although a dissenting opinion on this issue was agreed to by three members of the court who argued that the "... separate and preferred treatment to the owners of motorcycles should be held null and void under the severability provisions

House FD-2
Attachment 9
2-15-94

House Bill No. 2844

of the act". Nevertheless, the provision did withstand this legal challenge as well as the numerous other objections that were raised.

As House Bill No. 2844 indicates this obviously doesn't and isn't intended to suggest that this 1973 public policy decision cannot be changed.

House Bill No. 2844
Personal Injury Protection Rates
Motorcycles

Insurance Services Office*:

\$84.00 to \$237.00 depending on the size of the motorcycle.

*Insurance Services Office is a licensed rating organization that files rates on behalf of a number of insurers.

Midwest Mutual Insurance Company:

Age 21 and under

\$198.00 to \$944.00 depending on the size of the motorcycle.

Age 32 and over

\$40.00 to \$199.00 depending on the size of the motorcycle.

State Farm Mutual (Eastern-Remainder of State)*:

Age 21 and under

\$180.00 to \$423.00 depending on the size of the motorcycle.

Over 21

\$57.00 to \$124.00 depending on the size of the motorcycle.

* Kansas City Metropolitan Area approximately 2 times above rates.

Dairyland:

\$120.00 to \$360.00 depending on the size of the motorcycle.

Universal Underwriters:

\$84.00 to \$248.00 depending on the size of the motorcycle.

Motorcycle Premiums Volume
Kansas

	Liability Premium	P.I.P. Premium
State Farm	\$639,000	\$18,000
Dairyland	362,900	4,500
Midwest Mutual	353,800	38,000
Universal Underwriters	168,060	4,900
Progressive	166,000	12,000
American Family Mutual	149,000	2,800
Farmers	286,000	44,000
Mid Century	331,000	34,000