

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:37 p.m. on March 9, 2011, in Room 152-S of the Capitol.

All members were present except:

Representative Montgomery – Excused  
Representative Fawcett – Excused

Committee staff present:

David Wiese, Office of the Revisor of Statutes  
Ken Wilke, Office of the Revisor of Statutes  
Melissa Calderwood, Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Sue Fowler, Committee Assistant

Conferees appearing before the Committee:

Lee Wright, Farmers Insurance  
Bren Abbott, Abbott, Davidson & Southerland  
Bill Sneed, State Farm Insurance  
Callie Denton, KS Association for Justice  
James D. Hall, American Council of Life Insurers

Others attending:

See attached list.

Hearings on:

**SB 136**      **No cause of action for recovery of certain losses while operating an uninsured motor vehicle**

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview on **SB 136**.

Representative Shultz opened the hearing on **SB 136**.

**Proponents:**

Lee Wright, Farmers Insurance, (Attachment 1), gave testimony before the committee in support of **SB 136**.

Bren Abbott, Abbott, Davidson & Southerland, (Attachment 2), presented testimony before the committee in support of **SB 136**.

Bill Sneed, State Farm Insurance, (Attachment 3), appeared before the committee in support of **SB 136**.

Richard E. Wilborn, Farmers Alliance Mutual Insurance Companies, (Attachment 4), presented written testimony in support of **SB 136**.

David Monaghan, American Family Insurance Group, (Attachment 5), presented written testimony in support of **SB 136**.

Brad Smoot, American Insurance Association, (Attachment 6), presented written testimony in support of **SB 136**.

**Opponents:**

Callie Denton, Kansas Association for Justice, (Attachment 7), gave testimony before the committee in opposition to **SB 136**.

Robert E. Keeshan, Scott, Quinlan, Willard, Barnes & Keeshan, L.L.C., (Attachment 8), presented written testimony in opposition to **SB 136**.

Representative Shultz closed the hearing on **SB 136**.

**SB 85**      **Removal of mandatory participation requirements for group life insurance**

David Wiese, Office of Revisor of Statutes, gave a brief overview on **SB 85**.

Representative Shultz opened the hearing on **SB 85**.

## CONTINUATION SHEET

Minutes of the House Insurance Committee at 3:38 p.m. on March 9, 2011, in Room 152-S of the Capitol.

Proponent:

James D. Hall, American Council of Life Insurance, (Attachment 9), appeared before the committee in support of **SB 85**. Mr. Hall presented a conceptional amendment to **SB 85** during his presentation (Attachment 10).

Representative Shultz closed the hearing on **SB 85**.

Representative Grant moved without objection to pass the March 7, 2011 committee minutes as written.

Next meeting is scheduled for Monday, March 14, 2011, 3:30 P.M. in Room 152-S in Capitol.

Meeting adjourned at 4:55 p.m.

Name	Representing
Pick Wilborn	Farmers Alliance
Keith Stefani	Norice
Bill Sneed	State Farm
Tamara O'Connor	State Farm
Kristin Givens	State Farm
Justin Holstin	KAPCIC
Jim Hall	ACCI
Kristi Cellim	KID
Caleb Smith	Student
Jennifer Crow	KSAD
Brian Swin	Self
Leigh Keck	Capital Strategies
Sandy Braden	GSA



FARMERS

March 9, 2011

To: Representative Clark Shultz, Chairman  
House Insurance Committee

From: Lee Wright, Governmental Affairs Representative

Re: Testimony on Senate Bill 136 Position: Support

Mr. Chairman and members of the Committee, my name is Lee Wright and I am representing Farmers Insurance. Thank you for this opportunity to appear in support of SB 136.

The concept of this legislation is relatively simple. If an uninsured driver is involved in a vehicle accident, they would be restricted to recovering only their economic damages against the at-fault driver. Economic damages include expenses for past and future medical care, lost wages, and property damage to their vehicle. The uninsured driver is not eligible to receive compensation for non-economic damages (pain and suffering).

This legislation has sometimes been referred to as "No Pay, No Play". The bill also includes a provision that would preclude a driver, involved in an accident and found guilty of DUI, from recovering for non-economic damages. This type of legislation has been adopted in at least five other states including, California. The legislatures of Oklahoma, Montana, and Hawaii are also considering similar bills this year.

Joining me today is Bren Abbott from Farmers Branch Legal Office. Mr. Abbott can provide the Committee with some additional information, as his law firm regularly handles motor vehicle accident litigation, including claims involving uninsured motorists.

Thank you.

House Insurance  
Date: 3-9-11  
Attachment # 1

**HOUSE INSURANCE COMMITTEE**  
**CHAIRMAN: CLARK SHULTZ**  
**SENATE BILL 136**  
**TESTIMONY BY BREN ABBOTT**  
**ABBOTT, DAVIDSON & SOUTHARD**

There is little doubt that there is an ongoing problem of people illegally operating uninsured automobiles in this State. The refusal to buy the insurance frequently causes hardship to individuals injured in accidents caused by the uninsured driver. Any steps the legislature can take to ensure that all vehicles operated in the State is insured is well worth it.

Senate Bill 260 is a remarkably simple bill that limits when someone can make a claim for noneconomic losses. It only applies in two situations:

1. When an illegally uninsured motorist is operating an uninsured automobile and
2. When he or she is convicted of, or pleads guilty to, refusing or failing a test for alcohol or drugs following the accident or is convicted of driving under the influence of alcohol or drugs.

I will address these individually. The first one applies to an uninsured motorist and it has three limitations: 1) the injured party *owned* a vehicle that was required to have insurance but did not; 2) he or she was *operating* a vehicle that was uninsured; and 3) the injured person would have had to be the driver. Both the individual and the car have to be uninsured and the injured person would have to be operating the vehicle.

The Act would apply in the following situations:

Scenario 1: An individual is injured while operating his or her uninsured vehicle; and

Scenario 2: An individual is injured while operating a borrowed vehicle that is uninsured and he or she owns a car but does not have insurance.

The Act would not apply in the following situations:

Scenario 3: An individual claims injuries when he or she owned a vehicle that was insured but was driving an uninsured car.

Scenario 4: An individual claims injuries when he or she owned a vehicle that was required to have insurance but did not but he or she was driving a vehicle that was insured. An example of this situation is an individual let a policy lapse and borrows a car that is insured.

Scenario 5: The Act would not apply to a passenger or pedestrian.

Scenario 6: The Act would not apply to a situation where the injured person maintained insurance sometime in the 30 days preceding the accident, provided they had coverage for at least one year immediately prior to any failure to maintain coverage.

The second part of the law prohibits a drunk driver from collecting noneconomic losses (damages for pain and suffering). This provision is simply another warning that driving a car while under the influence of alcohol or drugs is not acceptable.

It should be understood that the act does not eliminate all claims of the injured person. Rather, it only eliminates the claims of "noneconomic losses," which are defined as pain and suffering and disability, disfigurement and any accompanying mental anguish suffered by the injured party. The proposed law specifically allows the injured party to collect reasonable expenses of necessary past and future medical care, hospitalization and treatment and past and future loss of time, income and diminished earning capacity.

I spend a significant part of my law practice defending uninsured motorist claims. I see on a daily basis the devastation that is caused when people elect to illegally operate uninsured motor vehicles or operate vehicles under the influence of alcohol. This bill is yet another way of telling these drivers that they are not in the right.

**TO:** THE HONORABLE CLARK SHULTZ, CHAIR  
HOUSE INSURANCE COMMITTEE

**FROM:** WILLIAM W. SNEED, LEGISLATIVE COUNSEL  
THE STATE FARM INSURANCE COMPANIES

**RE:** S.B. 136

**DATE:** MARCH 9, 2011

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent State Farm Insurance Companies ("State Farm"). State Farm is the largest insurer of homes in the United States and Kansas. We appreciate the opportunity to testify on S.B. 136. S.B. 136 restricts the tort liability of financially responsible Kansans who are involved in accidents with uninsured or drunk drivers. It limits the recovery of an uninsured vehicle owner who is driving an uninsured motor vehicle or an intoxicated driver to economic damages.

One of the perceived inequities of the tort system as it applies to motor vehicles is that an injured insured person has little hope of recovering from the at-fault driver for his or her injury if that driver is uninsured. On the other hand, after an auto accident, an uninsured injured person may make a claim against a financially responsible tortfeasor with a reasonable degree of certainty that he or she will recover not only out-of-pocket expenses but also non-economic intangible loss such as pain and suffering. The tort system, in effect, gives the uninsured a "free ride" entitling them to take advantage of a compensation structure to which they do not contribute. Responsible Kansans, by contrast must purchase increasingly expensive uninsured motor vehicle insurance in order to be fully protected for accidents caused by uninsured drivers.

S.B. 136 addresses this inequity by limiting the recovery of a driver of an uninsured motor vehicle, who is also the owner of a vehicle that does not comply with the Kansas Auto Reparations Act, to economic damages. Approximately 9% of all Kansas motorists are uninsured. (Source: study commissioned by the Insurance Research Council.) One of the purposes of this bill is to provide an incentive to uninsured owners and drivers to purchase insurance so they will pay their fair share of auto accident compensation costs. This sharing of costs enhances insurance affordability. In addition, S.B.136 has the potential of reducing insurance costs and the personal liability of insured Kansans, because the percentage of claim dollars now going to uninsured drivers will no longer be paid.

The Kansas Department of Transportation reported that in 2003, there were 2,280 injuries and 97 fatalities in alcohol related auto accidents. On average there are 9 alcohol related crashes

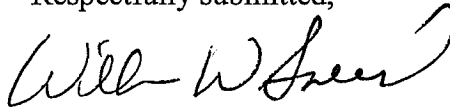
555 South Kansas Avenue, Suite 101  
Topeka, KS 66603-3443  
Telephone: (785) 233-1446  
Fax: (785) 223-1939  
www.polsinelli.com

per day in Kansas. Kansas has lowered the blood alcohol level to .08. In 1996, Kansas enacted stiffer penalties for those convicted of driving under the influence. Kansas also imposes stiffer fines and longer jail sentences on repeat offenders. These same individuals are able to avail themselves of the all the tort remedies that the law allows. Financially responsible Kansans are forced to compensate drivers whose intoxication may have contributed to the loss.

S.B. 136 passed the Senate 36-3.

S.B. 136 redresses systemic fairness issues inherent in the current tort system, encourages the purchase of insurance, reinforces drunk driving laws by limiting the recovery of intoxicated drivers and enhances insurance affordability. State Farm appreciates the opportunity to speak to the Committee on this issue, and we respectfully urge the Committee to pass this bill out of committee.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Will W. Sneed".

William W. Sneed

WWS:kjb



# FarmersAlliance

Insuring Rural America Since 1888

To: House Insurance Committee

From: Richard E. Wilborn

Re: Senate Bill No. 136

Date: March 9, 2011

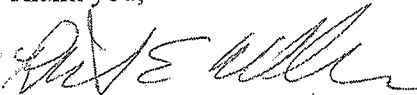
Mr. Chairman and Members of the Committee, I appreciate this opportunity to share our views relating to recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured vehicle.

My name is Rick Wilborn. I represent the Farmers Alliance Mutual Insurance Companies. Farmers Alliance is a Kansas domestic property and casualty company that has been operating in and committed to the State of Kansas since 1888. We also provide property and casualty insurance in eight other states.

You will have heard from a number of conferees, explaining the many benefits and empirical evidence supporting this measure. As a Kansas domestic Insurer providing auto insurance in many states, we are experiencing an increase in the number of uninsured motorists. The provisions contained in S.B. 136 should provide immediate results in lowering uninsured motorist loss costs and send an immediate message to the motoring public, both Kansans and out of staters, of the consequences of not purchasing Automobile Liability Insurance that is required by law. This approach eliminates the costly installation of unproven and cumbersome electronic systems at the local government and state government levels. In addition, additional costs are not incurred by Insurers and thus are not passed on to the insuring public.

I respectfully urge your support of S.B. 136.

Thank you,



Rick E. Wilborn, CPCU

1122 N. Main, P.O. Box 1401 • McPherson, KS 67460  
620.241.2200 • fax 620.241.5482 • www.fami.com  
Farmers Alliance Mutual Insurance Company  
Alliance Indemnity Company • Alliance Insurance Company, Inc.

House Insurance  
Date: 3-9-11  
Attachment # 4

American Family Insurance Group  
3216 N. Ten Mile Drive, Suite A  
Jefferson City, Missouri 65109  
Phone (573) 893-9210 ext. 56204  
Fax (877) 888-1842  
E-mail: dmonagha@amfam.com



David Monaghan, GPCU  
Government Affairs Counsel

## WRITTEN TESTIMONY ONLY

March 9, 2011

Representative Clark Shultz  
Kansas State Capitol  
Room 166-W  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Re: American Family Insurance's testimony in support of Senate Bill 136

Dear Chairman Shultz and Members of the House Insurance Committee:

American Family Insurance insures approximately sixteen percent of the automobiles and homes in the state. We offer insurance products through some 210 insurance producers who reside throughout the state.

Senate Bill 136 would prohibit the recovery of non-economic damages by uninsured drivers and drivers who are guilty of alcohol or drug-related violations in connection with the accident.

The bill would not affect an uninsured or impaired motorist's ability to collect economic damages. Further, the bill does not apply to uninsured drivers whose policy has lapsed within thirty days of the accident.

We believe Senate Bill 136 strikes the proper balance by ensuring that uninsured and impaired drivers may collect damages arising from pecuniary harm including medical damages, lost wages and lost earning capacity. The measure also ensures that drivers who are merely late with insurance premium payments are not adversely impacted by the bill.

A task force created by the legislature studied the issue of uninsured motorists for three years. In 2009, the Kansas Electronic Motor Vehicle Financial Security Verification Task Force recommended the state adopt legislation to "bar uninsured motorists from the recovery of non-economic losses sustained as the result of an accident that occurred while the motorist was operating an uninsured vehicle."

We support Senate 136 and urge you to do so.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Monaghan", written over a horizontal line.

David Monaghan

House Insurance  
Date: 3-9-11  
Attachment # 5

**BRAD SMOOT**  
ATTORNEY AT LAW

800 SW JACKSON, SUITE 808  
TOPEKA, KANSAS 66612  
(785) 233-0016  
(785) 234-3687 (fax)  
bradsmoot@smootlawoffice.com

10200 STATE LINE ROAD  
SUITE 230  
LEAWOOD, KANSAS 66206

STATEMENT OF BRAD SMOOT  
LEGISLATIVE COUNSEL  
AMERICAN INSURANCE ASSOCIATION  
HOUSE INSURANCE COMMITTEE  
Regarding 2011 SB 136  
March 09, 2011

(Written Testimony Only)

Dear Chairman and Members:

On behalf of the American Insurance Association, a nationwide trade association whose 300 member companies write all lines of property and casualty insurance, including general liability, business, workers compensation, medical malpractice, homeowners and auto, I am pleased to support Senate Bill 136.

AIA strongly supports SB 136, the so-called "no pay, no play" bill. As the numbers of uninsured motorists climb nationwide, we applaud this effort to place some of the consequences of driving uninsured with those very motorists who have chosen to ignore Kansas' existing legal obligations. While not a complete solution to uninsured driving, placing some of the burden with those who chose to ignore their legal obligations should, of course, help encourage them to take the prudent and required step of maintaining minimum automobile insurance.

Moreover, such an approach should provide some relief for those Kansans who do the responsible thing and obtain the required insurance. Every uninsured driver involved in an accident can impact every Kansan who properly obtains automobile insurance because those responsible Kansans also obtain "uninsured motorist" coverage to protect themselves against the risk posed by uninsured drivers. Not surprisingly, the cost of uninsured motorist coverage can be closely tied to the likelihood of accidents with uninsured drivers. In short, people who drive without auto insurance cost law-bidding drivers more. So, in addition to being sound public policy, it is fundamentally fair to encourage uninsured drivers to obtain automobile insurance.

Although some may suggest that SB 136 is overly harsh, it is important to underscore what SB 136 would and would not do. It would only limit the ability of people to recover noneconomic damages when they fail to maintain minimum automobile insurance. Thus, it would not preclude an injured person (who, incidentally, had not met his/her legal obligations) from pursuing claims for medical bills, lost wages or lost future income. Consequently, we think the bill strikes a fair balance, one that will encourage lawful behavior.

Finally, the changes proposed in SB 136 are neither new nor untested. Eight states already have some form of "no pay, no play"—Alaska, California, Iowa, Louisiana, Michigan, New Jersey, North Dakota and Oregon—and more than 20 states have proposed similar laws. AIA supports SB136 as a common sense deterrent to driving without insurance. It is a matter of fairness to the overwhelming majority of Kansans who follow the law.

House Insurance  
Date: 3-9-11  
Attachment # 6

To: Representative Clark Shultz, Chairperson  
Members of the House Insurance Committee

From: Callie Jill Denton  
Director of Public Affairs

Date: March 9, 2011

Re: SB 136 An act concerning insurance; relating to the recovery  
of economic or non-economic loss (*Oppose*)

The Kansas Association for Justice (KsAJ) is a statewide, nonprofit organization of trial lawyers. KsAJ members support protection of the right to trial by jury and fair laws that protect all parties in a dispute.

SB 136 amends Kansas' mandatory automobile insurance coverage laws by eliminating the right to seek recovery of non-economic loss in three situations:

1. failing to maintain mandatory auto coverage for at least a year or more and having a break in coverage of greater than 30 days, just prior to an auto accident
2. violation of KSA 8-1014: Suspension and restriction of driving privileges for test refusal, test failure or alcohol or drug-related conviction; increased penalties for blood or breath alcohol concentration of .15 or greater; ignition interlock device
3. violation of KSA 8-1567: Driving under influence of alcohol or drugs

Proponents call SB 136 the "no pay no play" bill and say it will incentivize compliance with mandatory coverage laws. **In reality, it will punish many more law-abiding Kansans that have an unintentional break in coverage than drivers that intentionally disregard the law.** SB 136

won't cause one person to buy auto coverage. SB 136 is a punishment that does not fit the crime.

**SB 136 applies whether or not the uninsured driver was at fault.** If an uninsured driver is stopped at a red light and is rear-ended by an insured, negligent driver, SB 136 would apply to punish the uninsured driver, even though he was not at fault. It is unfair to punish careful uninsured drivers and protect reckless insured drivers.

**SB 136 punishes willful failure to maintain insurance as harshly as unintentional, accidental, or unknown lapses in coverage.** There is no "safe harbor" in SB 136 for Kansans with an unintentional lapse in coverage in the following situations:

- Drivers that don't discover the lapse in coverage within 30 days. Drivers have 30 days or less—not even a full billing cycle—to discover and correct any unintentional lapses in coverage. But auto insurers are not required to provide notice to drivers that their auto coverage has lapsed, even though purchasing auto insurance is required by law. A driver reasonably may not discover he is driving uninsured before 30 days has expired and may be caught in SB 136's trap, regardless of how long he maintained prior continuous coverage.
- Drivers that have been insured for less than a year. New drivers, military personnel returning from active duty or anyone that has not maintained continuous coverage for at least one year and has a break in coverage of over 30 days is punished by SB 136 and is not saved by the "safe harbor".
- Drivers who overlook or get behind in their bills for any reason. In these tough economic times, it is easy to imagine a cash-strapped family having to pick which bills to pay first or skipping a month's bills. Elderly persons on fixed incomes may be at risk. Death, illness, or travel could result in a lapse in coverage. In any of these situations the lapse of coverage may not be corrected within 30 days or less, despite the driver's intent to abide by the law.
- Drivers that pay their insurance coverage with credit cards or automatic withdrawals. If the credit card is cancelled for any reason, or there is a change to the account, or there is an administrative error, coverage may lapse and not be discovered by the driver in 30 days or less.

- Drivers with separate maintenance agreements (prior to a divorce.) If one spouse is responsible for pay auto premiums but fails to do so, the other spouse may have no knowledge that coverage is lapsed. They may have no way to discover the lapse.
- Drivers that pay their premium to an insurance agent and believe they have coverage, but the agent never pays the insurance company. Fortunately, fraud is the exception and not the rule. When fraud happens, it may be months or years before the driver realizes they are uninsured. Drivers may not find out until they report claims following an accident, only to discover they have no coverage.

**SB 146 is unnecessary because penalties for non-compliance with mandatory coverage laws are already significant.** SB 136 is not a realistic incentive for people to buy and maintain coverage. Most citizens don't know what non-economic damages are, which means it is unlikely that they consider losing them when deciding whether or not to purchase mandatory auto coverage.

However, because of the 2009 Kansas Court of Appeals case *State v. Cox*, **law enforcement can arrest drivers on the spot for failure to produce proof of insurance.**

Statutory penalties for violating mandatory insurance laws include the following:

- KSA 40-3104 (g) Penalties for failure to maintain financial security
  - class B misdemeanor and a fine of not less than nor more than \$1,000 or confinement in the county jail of not more than six months, or both;
  - class A misdemeanor and a fine of not less than \$800 nor more than \$2,500 for violation within three years of a prior conviction.
  - In addition, the secretary of revenue may suspend the driver's license, and if the driver was a non-resident, the privilege of operating a motor vehicle in the state; and in some cases, revoke vehicle registration.
- KSA 40-3118 (i) Penalties for false certification of financial security for purposes of registration; class A misdemeanor.

**SB 136 punishes stay-at-home moms, retired people, and people earning low incomes the most.** An injured driver that does not receive a paycheck or who is a low wage earner will have less economic loss, even if they suffer the same physical injury as a driver that is a businessman.

Recovering non-economic losses are important to women that work in the home and retirees that are injured by the negligence of others.

**SB 136 affects not only uninsured drivers, but passengers too.** The bill is drafted broadly and may apply to passengers if the passenger has the authority to operate the vehicle and the duty to insure the vehicle. For example, if a family's coverage has lapsed and an accident occurs, SB 136 would limit not only the driver's non-economic damages (the husband) but also the passenger (wife). Other passengers that have similar duties may likewise be affected, even though they are not driving the vehicle.

**SB 136 does not fix the real problem: inadequate, ineffective uninsured/underinsured motorist coverage (UM/UIM).** UM coverage is an accident insurance benefit that protects the policyholder against bodily injury or death in a collision if they are hit by a driver that is uninsured or "hits and runs" and is never identified. UIM coverage is an accident insurance benefit that protects the policyholder against bodily injury or death in a collision if they are hit by a driver that carries inadequate auto liability coverage.

UM/UIM coverage is often not sufficient or effective coverage for policy holders. Consequently, responsible Kansans that have maintained coverage are not protected by their own UM/UIM insurance when they are hit by an uninsured motorist. Unfortunately, SB 136 doesn't address the problems with UM/UIM coverage. KsAJ introduced HB 2291 to protect responsible Kansans and assure that UM/UIM is adequate effective coverage. We hope to discuss HB 2291 with the House Insurance Committee in the future.

**KsAJ supports mandatory coverage laws and full compliance with them.** Mandatory auto insurance coverage laws are sound public policy. They protect the public from bearing the medical costs of injured drivers and repair costs of property damaged in auto accidents. Maintaining adequate auto coverage is in drivers' best interests. It assures they can pay their medical bills and repair or replace their property if they are in an accident.

**However, SB 136 is unnecessary. SB 136 will hurt more Kansans that are law-abiding than law-evading. And it fails to address the problems with UM/UIM coverage, which is the relief that responsible Kansans truly need.**

We respectfully request that the Committee oppose SB 136.



## Understanding Non-Economic Damages

### ***What is the problem with capping or eliminating non-economic damages and paying only economic damages?***

In most cases, lost earnings make up the largest part of the economic damages that go directly to the injured person. Essentially, then, limiting non-economic damages results in valuing the destruction of an individual's life based on what that person would have earned in the marketplace but for the injury. The lives of low wage earners, children, senior citizens, and women that work in the home are deemed less than the life of a businessman because they can't be valued in terms of lost earnings.

Basing the value of someone's life on what they could earn in the marketplace sends a terrible message. It says to senior citizens that despite having spent their entire lives paying taxes, raising a family, and playing by the rules, now, due to someone else's negligence, they cannot have what their years rightfully earned them: the prospect of an enjoyable, vigorous, and happy old age.

Is a mom that makes the decision to stay home with her family less valuable than a mother that works in an office? Prohibiting or capping non-economic damages says, "Yes." There is more to a human being than the amount of the person's paycheck.

### ***What kinds of injuries do non-economic damages compensate for, and why are non-economic damages so important?***

The joy of life—what makes it really worth living—is not the earning of money to pay others for life's necessities. When a person is seriously injured, the greatest loss is the loss of the enjoyment of life, the pleasure, the satisfaction or the utility that human beings derive from life, separate and apart from earnings. These are non-economic losses, or damages.

What is truly valuable to us as human beings is our ability to live life on a daily basis free of any debilitating physical or emotional problems that diminish our capacity to enjoy life and compromise our sense of self-worth, dignity, and integrity.



The pleasure of living lies in our ability to participate fully in the give and take of marriage, family and career. It lies in our experience of the ordinary day--waking up without pain. Drinking a cup of coffee without someone's help. Dressing a child in mismatched clothes that she insists on wearing, rather than have that child dress you. Walking briskly rather than being wheeled to a lift van. Accomplishing a challenging task on the job, rather than being limited to make-work projects for the disabled. Deciding what to make for dinner and preparing it. These and thousands of everyday things that we don't think twice about, but that we would miss if we could no longer perform them independently or competently, are important and valuable.

In addition to physical pain and suffering, the seriously injured victim suffers great mental anguish, anxiety and often shame at being transposed from an able-bodied working person respected for his or her accomplishments and contributions to others to an individual who is dependent on others. A seriously injured person is compromised in his or her ability to make decisions and realize them, to take independent action, and to reciprocate when someone helps them. A seriously injured person is also deprived of the pleasure of engaging as equals with other people, including family members, or participating in athletic activities, social and civic events, hobbies, volunteer activities and other interpersonal interactions.

These are sufferings which seriously injured people encounter each time they attempt to perform any of the myriad tasks of daily life the rest of us take for granted. This is the loss that the law describes as "non-economic," and which goes to the very essence of our quality of life.

*Adapted from "Understanding Non-Economic Damages", Center for Justice & Democracy.*

**SCOTT, QUINLAN, WILLARD, BARNES & KEESHAN, L.L.C.**

LAWYERS  
3301 SW VAN BUREN STREET  
"WHITE LAKES AREA"  
TOPEKA, KS 66611-2225  
TELEPHONE (785) 267-0040  
FAX (785) 267-6745  
E-mail: [bob@sqwblaw.com](mailto:bob@sqwblaw.com)

JAMES S. WILLARD  
PATRICK R. BARNES  
ROBERT E. KEESHAN

GEORGE A. SCOTT (1979)  
JACK A. QUINLAN (2008)

RANDY R. DEBENHAM  
PAIGE J. EICHERT\*\*  
\*\*licensed in Kansas and Missouri

March 8, 2011

Representative Joe C. Patton  
Kansas House of Representatives  
300 SW 10<sup>th</sup> Ave.  
Topeka, KS 66612

Representative Clark Shultz  
Kansas House of Representatives  
300 SW 10<sup>th</sup> Ave., Room 141W  
Topeka, KS 66612

**Re: Senate Bill No. 136**

Dear Representatives Patton and Shultz:

I write in opposition to Senate Bill 136 to eliminate the cause of action for non-economic damages for drivers of uninsured vehicles based upon a real world scenario.

I represent a former youth pastor/store manager whose personal injury protection insurance was cancelled for nonpayment. He then received a notice from the bank stating that they were placing one year's insurance on his vehicle and adding it to the end of the note. The bank's insurance was collision only, but my client didn't know any better. Therefore, he didn't reinstate his personal injury protection coverage, thinking he would do so at the end of the year.

About four months later, while driving home from work with his family, he was broadsided by a 17 year old teenager driving a 1993 Chevy Suburban who ran a stop sign at 12<sup>th</sup> and

House Insurance  
Date: 3-9-11  
Attachment # 8

March 8, 2011

Page 2

Taylor. The teenager hit my client's vehicle broadside on the passenger side. My client had over \$24,000 in medical bills, his spleen ruptured and was later removed and he developed an infection after surgery making him more susceptible to infections requiring the use of antibiotics for routine dental matters and resulting in greater and longer illnesses. He was off work for over two months and as one might imagine had some pain and suffering from the surgery and infection.

His two year old daughter in the vehicle also sustained brain damage and was life flighted to Children's Mercy Hospital in Kansas City. A son had a fractured clavicle. His wife, a named insured, also had some injuries, although relatively minor by comparison.

Neither driver refused to be tested for impairment and neither driver was any way impaired by either drug or alcohol. However, due to the inadvertent misunderstanding of the bank reinstating insurance, he has significant non-economic damages solely as a result of a teenager who was lost, not paying attention, possibly talking on a cell phone and who ran a stop sign and broadsided him.

If SB 136 were in force to eliminate a cause of action for non-economic damages, he would receive no compensation for the pain and suffering he sustained and the anxiety regarding the injuries to the rest of his family.

While I have no sympathy for drivers that are actually impaired, the scope of this bill improperly protects only negligent drivers, regardless of the status of their victims.

Very truly yours,

SCOTT, QUINLAN, WILLARD,  
BARNES & KEESHAN, L.L.C.

Robert E. Keeshan

REK:dt

cc: Brian Swim



*James D. Hall*  
*Regional Vice President, State Relations*  
*(913) 599-2320 t (866) 953-4107 f*  
*jameshall@accli.com*

March 9, 2011

The Honorable Clark Shultz  
Chair  
House Insurance Committee  
Room 166-E  
State Capitol  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Re: Senate Bill 85 – Support

Mr. Chairman:

I am writing on behalf of the American Council of Life Insurers (ACLI), a national trade association whose over 300 members account for over 90 percent of the total life insurance premiums and annuity considerations in the United States. ACLI has 270 members licensed in Kansas.

Thank you for the opportunity to appear in support of SB 85. With this bill, the life insurance industry hopes to modernize the state's existing group insurance law.

In recent years, employee benefits have changed significantly. There was a time when employers paid a substantial portion of the cost of employee benefits. Many corporations still do. But due to the increasing burden of health insurance costs, employers of all sizes have reduced or leveled their contributions to health care and to ancillary benefits in order to continue to afford employee health coverage.

In light of the employers' reduced ability to fund a vast array of employee benefits, they have sought voluntary benefits for their employees. These are benefits for which employees can pay 100% of the premiums or at least share the cost with employers. Today, 25% of the group life insurance market is fully voluntary.

By offering these voluntary products through an employer group, the employer can continue to offer their employees the advantages of payroll deduction, group rates, limited underwriting, and other efficiencies in administration.

In considering how best to meet the changing demands of the market place, and in particular how to help small businesses, insurers discovered restrictions in the older group insurance laws of many states. Written many years ago, these older provisions have since created an impediment to a number of otherwise common group insurance offerings. These limitations restrict employee and dependent access to voluntary coverage. The Kansas group insurance law was originally enacted in 1951. It was updated to adopt the NAIC Model in 1972. It has been amended periodically since then, but the older restrictions were never removed. Given the realities of today's employer group market, the outdated group insurance law appears ill-suited to protect and benefit consumers.

In SB 85, we are seeking to modernize Kansas law by repealing or amending four categories of limitations within group laws: 1) minimum number of lives requirements; 2) group participation requirements; 3) prohibitions on fully employee-paid group insurance; and 4) limitations on ability of dependents to obtain group life insurance.

The above mentioned limitations were originally written years ago, in part to protect insurers from adverse selection. They were also written at a time when it was believed that the employer must pay part, or all, of the premium for the coverage in order for the contract to be legitimately an employer group plan. State insurance regulators and the life insurance industry agree that these assumptions no longer hold true.

The group life insurance modernization provided by SB 85 is not a new development. The changes in the group insurance statutes have been occurring over the last twenty years in over forty states. At present, only 3 states (including Kansas) have not modernized their group life insurance laws. Our neighbors Missouri, Nebraska, Oklahoma and Colorado have all modernized their group life laws.

Many Americans receive their life, health and disability insurance benefits through their employers. It is important that employers have the option of offering group insurance benefits as a way of attracting and keeping employees.

It should be noted that modernization of the group life insurance laws will not harm the individual life insurance product. The two products serve different markets. Indeed, many companies that support group life modernization also write individual life insurance. These companies would not support legislation that helps one of their products lines at the expense of another. Companies that write both individual and group life insurance view the two product lines as complimentary to each other.

Most states have permitted the key elements of group life modernization for years and there has been no movement toward group and away from individual insurance because of it. Individual life sales continue to represent a significant portion of the market.

Group life insurance is a necessary vehicle of protection for those workers who can't afford individual insurance or can't buy it because of their age or health status. It is important to remember that most group insurance is provided without the applicant having to provide evidence of insurability. While individual coverage can be a favorable option for individuals who

Honorable Clark Shultz

March 9, 2011

Page 3

have no major medical issues, group insurance generally provides coverage for all individuals regardless of health status. Group insurance is generally offered subject to certain limitations, such as limits on death benefit amounts and limits on the types of additional benefits that may be offered. Individual life insurance is more flexible in these areas. In summary, as noted above, group life insurance and individual life insurance serve different markets. Modernization of the group life insurance law will not adversely affect the individual life insurance market. By offering these voluntary life insurance products through an employer group, the employer can continue to offer their employees the advantages of payroll deduction, group rates, limited underwriting, and other efficiencies in administration. The enactment of SB 85 will make these opportunities available to Kansans.

Thank you for the opportunity to comment in support of SB 85.

Very truly yours,

A handwritten signature in black ink, appearing to read "James D. Hall". The signature is fluid and cursive, with the first name "James" and last name "Hall" being clearly legible.

James D. Hall

1 unions for the benefit of persons other than the employers or the unions,  
2 subject to the following requirements:

3 (a) The persons eligible for insurance shall be all of the employees  
4 of the employers or all of the members of the unions, or all of any class or  
5 classes thereof determined by conditions pertaining to their employment,  
6 or to membership in the unions, or to both. The policy may provide that  
7 the term "employees" shall include retired employees and the individual  
8 proprietor or partners if any employer is an individual proprietor or a  
9 partnership. No director of a corporate employer shall be eligible for  
10 insurance under the policy unless such person is otherwise eligible as a  
11 bona fide employee of the corporation by performing services other than  
12 the usual duties of a director. No individual proprietor or partner shall be  
13 eligible for insurance under the policy unless the proprietor or partner is  
14 actively engaged in and devotes a substantial part of their time to the  
15 conduct of the business of the proprietor or partnership. The policy may  
16 provide that the term "employees" shall include the trustees or their  
17 employees, or both, if their duties are principally connected with such  
18 trusteeship.

19 (b) The premium for the policy ~~shall~~ may be paid by the trustees  
20 either wholly from funds contributed by the employer or employers of the  
21 insured persons, or by the union or unions, or by both, or partly from such  
22 funds and partly from funds contributed by the insured employees *or*  
23 *wholly from funds contributed by the employees or members at their*  
24 *option. No policy shall be issued on which the entire premium is to be*  
25 *derived from funds contributed by the insured persons.* The policy shall  
26 insure all eligible persons, or all except any as to whom evidence of  
27 individual insurability is not satisfactory to the insurer *or except those*  
28 *who reject coverage in writing.*

29 (c) ~~The policy shall cover at date of issue at least 100 persons and~~  
30 ~~not less than an average of five persons per employer unit.~~ (d) The  
31 amounts of insurance under the policy shall be based upon some plan  
32 precluding individual selection either by the insured persons or by the  
33 policyholder, employers, or union.

34 (e) (d) The requirements of paragraphs (b) and (c) of this subsection  
35 governing employer contributions and amounts of insurance shall not  
36 apply to a voluntary term life insurance policy issued on a group basis.

37 (5) A policy issued to an association which has been organized and  
38 is maintained for purposes other than that of obtaining insurance, insuring  
39 at least 25 members, employees, or employees of members of the  
40 association for the benefit of persons other than the association or its  
41 officers. The term "employees" as used herein shall be deemed to include  
42 retired employees. The premiums for the policies shall be paid by the  
43 policyholder, either wholly from association funds, or funds contributed

1 by the members of such association or by employees of such members or  
2 any combination thereof. The amounts of insurance under the policy shall  
3 be based upon some plan precluding individual selection either by the  
4 insured person or by the association or by the member.

5 (6) Any policy issued pursuant to this section may be extended to  
6 insure the employees against loss due to the death of their spouses, their  
7 children, their grandchildren, their spouse's children, their spouse's  
8 grandchildren, their parents, their spouse's parents, or any class or classes  
9 thereof, subject to the following requirements:

10 (a) The premium for the insurance ~~shall~~ may be paid by the  
11 policyholder, either from the employer's funds or from funds contributed  
12 by the insured employees, or from both. ~~If any part of the premium is to~~  
13 ~~be derived from funds contributed by the insured employees, the~~  
14 ~~insurance with respect to spouses, their children, their grandchildren,~~  
15 ~~their spouse's children, their spouse's grandchildren, their parents and~~  
16 ~~their spouse's parents may be placed in force only if at least 75% of the~~  
17 ~~then eligible employees, excluding any as to whose family members'~~  
18 ~~evidence of insurability is not satisfactory to the insurer, elect to make the~~  
19 ~~required contribution.~~ If no part of the premium is to be derived from  
20 funds contributed by the employees, all eligible employees, excluding  
21 any as to whose family members' evidence of insurability is not  
22 satisfactory to the insurer, shall be insured with respect to their spouses,  
23 their children, their grandchildren, their spouse's children, their spouse's  
24 grandchildren, their parents, their spouse's parents.

25 (b) ~~The amounts of insurance shall be based upon some plan~~  
26 ~~precluding individual selection either by the employees or by the~~  
27 ~~policyholder, or employer and shall not exceed with respect to any~~  
28 ~~spouse, child or parent 50% of the insurance on the life of such insured~~  
29 ~~employee covering an employee's spouse, their children, their~~  
30 ~~grandchildren, their spouse's children, their spouse's grandchildren, their~~  
31 ~~parents or their spouse's parents shall not exceed 100% of the amount of~~  
32 ~~insurance on the life of the insured employee.~~

33 (c) Upon termination of the insurance with respect to the spouse of  
34 an employee by reason of the employee's termination of employment or  
35 death, the spouse insured pursuant to this section shall have the same  
36 conversion rights as to the insurance on such spouse's life as is provided  
37 for the employee under K.S.A. 40-434, and amendments thereto.

38 (d) Notwithstanding the provisions of K.S.A. 40-434, and  
39 amendments thereto only one certificate need be issued for delivery to an  
40 insured person if a statement concerning any dependent's coverage is  
41 included in such certificate.

42 (e) ~~The requirements of paragraphs (a) and (b) of this subsection~~  
43 ~~governing participation, contribution by an employer and amounts of~~

(c)