MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 3:30 p.m. on February 8, 2011, in Room 144-S of the Capitol.

All members were present except:

Representative Sloan – excused

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department Eunice Peters, Office of Revisor of Statutes Florence Deeter, Committee Assistant

Conferees appearing before the Committee:

Representative Lance Kinzer, 14th District
Arlyn Briggs, Olathe, Kansas
Doug Mays, Doug Mays & Associates, LLC
Representative Ann Mah, District 53
Kurt Young, Tecumseh, Kansas
Bill Sneed, Legislative Counsel, State Farm Insurance Company

Lee Wright, Sr. Governmental Affairs Representative, Farmers Insurance Company

Others attending:

See attached list.

Hearing On: <u>HB 2066 – Cities relating to annexation</u>.

The Chairman called the meeting to order and introduced Staff Eunice Peters, Office of Revisor of Statutes, who provided a summary of the bill, stating that the bill creates a new law regarding persons annexed into a city and having to pay taxes for both properties within a fire district. The bill sets forth provision for refund of taxes on one property.

Representative Lance Kinzer, 14th District, explained the annexation process in Olathe delayed removing the area annexed from the fire district previously providing service. This resulted in the property owner having to pay double taxes for fire protection (<u>Attachment 1</u>). He said that this bill offers a remedy to persons having similar circumstances.

Arlyn Briggs, Olathe, Kansas, provided background on the annexation process which began in 1999 (Attachment 2). He stated that the city moved to initiate annexation without considering the choices of the residents in the proposed area. Mr. Briggs reported that in 2000 those who agreed to annexation were taxed by both the city and the county for fire protection. Subsequently the city reduced the mill levy as compensation. He said a recent bond issue that benefits Rural Fire District #3 in Johnson County will not be paid in full until 2014, which results in ongoing tax payments. Mr. Briggs said that there is no time limit set for repayment of tax money to residents and reimbursements have not been made to date.

Doug Mays, Doug Mays & Associates, LLC, Kansas Governmental Affairs, and representing the City of Olathe, commented that the city has limited the number of unilateral annexations of rural areas. He indicated that subdivision developers signed an agreement to be annexed at a future date prior to being developed. Mr. Mays said the bill offers reasonable solutions.

The Chairman closed the hearing on **HB 2066**.

Hearing On: <u>HB 2041 – Licensure qualifications</u>; pawnbrokers and precious metals dealers.

Staff Eunice Peters, explained that the bill determines the qualifications for obtaining a license for the state of Kansas. She noted sub-section (b) is removed and a new sub-section (g) has wording which eliminates residency requirements.

Representative Ann Mah, District 53, commented on the outdated intent of the bill and requested the removal of the two-year residency requirement for persons doing business as a pawnbroker or dealer of precious metals (<u>Attachments 3 and 4</u>). She introduced a constituent in her district, Kurt Young, to elaborate on the possible impacts of the bill.

CONTINUATION SHEET

Minutes of the House Elections Committee at 3:30 p.m. on February 8, 2011, in Room 144-S of the Capitol.

Kurt Young, Tecumseh, Kansas, explained that his local business establishment is rented by vendors who are sellers of precious metals and/or pawned items. He reported that the two-year residency requirement in this bill limits those out-of-state purveyors of jewelery and other items. Mr. Young noted that removal of the residency requirement would provide a more competitive environment for those desiring to do business in Kansas (Attachment 5).

The following have submitted written testimony in opposition of the proposed bill:

Bill Michaud, Director of Operations, Parrish Hotel Corporation, (<u>Attachment 6</u>). Frank Aguilar, Jr., Vice President, American Collateral Lenders, Inc., (<u>Attachment 7</u>). Jeff & Robin Tummons, House of Stuart, Ltd. & Mission Pawn, Mission, Kansas, (<u>Attachment 8</u>). C. G. McPike, Taylor, Missouri, (<u>Attachment 9</u>).

The Chairman closed the hearing on **HB 2041**.

Hearing on: <u>HB 2119 – Emergency medical services</u>, relating to accident response service fees.

Staff Eunice Peters, reviewed the bill, stating that current law allows the governing body of a fire district to set the amount of charges for services to individuals both within and outside the township or fire district. She indicated the intent of <u>HB 2119</u> is to prevent "accident response service fees" as delineated in the bill.

Bill Sneed, Legislative Counsel, speaking on behalf of State Farm Insurance Company, said that third-party billing companies have placed themselves in position for receiving commissions on fees collected for emergency rescue services (<u>Attachment 10</u>). He indicated that these so called "crash taxes" are a form of double taxation on local residents and have a significant impact on the cost of insurance. Mr. Sneed said that uninsured drivers have immunity from paying service fees and the insured driver, who obeys the law and holds insurance coverage, is penalized. Mr. Sneed respectfully requested the committee to consider the proposed intent of the bill favorably.

Lee Wright, Sr. Governmental Affairs Representative, Farmers Insurance Company, said that charging of accident fees, commonly called "crash tax," are already included in local taxation. He said that there are ten states, including Missouri and Oklahoma, that have taken action to prohibit this dual taxation. Mr. Wright said that Farmers Insurance Company pays an average of \$500 of fees charged against policy holders. He noted that those costs are not included in auto insurance rates at this time. Responding to a question, Mr. Wright indicated that Salina and Manhattan are two cities that have this policy in place. He requested the committee consider the bill favorable for passage (Attachment 11).

The following have submitted written testimony in support of **HB 2119**:

David Monaghan, American Family Insurance, (<u>Attachment 12</u>). Kerri Spielman, Kansas Association of Insurance Agents, (<u>Attachment 13</u>). Joe Thesing, National Association of Mutual Insurance Companies, (<u>Attachment 14</u>). David Hanson, Kansas Association of Property & Casualty Insurance Companies, (<u>Attachment 15</u>).

The Chairman requested additional research for committee members on various issues and questions regarding emergency service fees.

The Chairman closed the hearing on HB 2119.

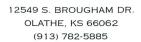
The meeting was closed at 5:05 p.m. The next meeting is scheduled for February 10, 2011.

HOUSE LOCAL GOVERNMENT

GUEST LIST

DATE: 2 8 11

NAME	REPRESENTING
Bill Sneed	State Farm
Les WRIGHT	FARMERS INS.
KURT YOUNG	MYSELF
Day Mays	Lottle Good Relations
Travis Lowe	Lottle Good Relations
Lauce Kinzer	Dist 14
	IMP
Nathay Eberline	LKM
Pat Rihman	KFCP
Kerri Spielman	KATA
Grad Smeat	AIA
Durid Hanson	PCI - KS Assa P+C Cos
Da Murray	Federico Consult
ERIK SARTORIUS	City of Overland Park
	, ,



STATE CAPITOL, ROOM 165-W TOPEKA, KS 66612 (785) 296-7692 lance.kinzer@house.ks.gov

STATE OF KANSAS HOUSE OF REPRESENTATIVES



TOPEKA

CHAIRMAN: JUDICIARY
VICE-CHAIRMAN: CORRECTIONS AI

VICE-CHAIRMAN: CORRECTIONS AND JUVENILE JUSTICE

COMMITTEE ASSIGNMENTS

MEMBER: JOINT COMMITTEE ON STATE-TRIBAL RELATIONS RULES & JOURNAL

LANCE KINZER REPRESENTATIVE, 14TH DISTRICT

TESTIMONY REGARDING HB 2066

HB 2066 addresses an issue of simple fairness. Paying for core services like fire protection is something that few people begrudge. Paying for it twice is a different matter, especially when one of the entities to whom it is paid no longer provides the service. Mr. Briggs will describe the specific situation faced by some of my constituents in Olathe and may have some ideas about how to improve HB 2066. For me the core issue is that when annexation occurs a delay in detaching the area annexed from the fire district by which it was previously served should not result in double taxation. In Olathe, Johnson County RFD #3 refused to agree to attach residents who had been annexed into the City of Olathe for a number of years. This was simply not fair to residents in the annexed area. HB 2066 proposes to provide a remedy for anyone who finds themselves in a similar circumstance.

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Attachment

Ladies and Gentlemen,

Thank you for allowing me to come and testify on behalf of HB2066. This bill originated as a result of what happened when I was annexed into the city of Olathe against my will in 2001 from Johnson county. I was not the only person who was forced into annexation but the task has fallen to me to push the change in the law so others in the future will be free of the nightmare that faced us then and will continue to haunt us in higher taxes through 2014.

This entire process began in 1999 when the city sent a letter to residents asking if they would want to be annexed into the city. A number of informational meetings were held but direct and forthright answers were few and far between. I specifically asked Robert Montgomery, who recently was elected to this House, Jim Randall and the city manager how many it would take to start the annexation process. Their answered they didn't know but rather were trying to gauge the interest level before proceeding. Later Mr. Randall would openly say they knew they were going to do the annexation regardless of the residents desires. There were veiled threats of a special benefit district for roads and sewers if we did not agree to be annexed and waited to the forced annexation. Little did they know they were adding fuel to my resistance to their intimidation and heavy handed tactics.

When those who gudgingly agreed to be annexed by Olathe in 2000 they were taxed by both the city and the county for fire protection. When this was pointed out to the city, they reduced the mill levy to take away a portion of the city tax. However during that time frame, the county commissioners allowed a bond issue to become enacted which benefited Rural Fire District #3 of Johnson County. That bond issue will not be paid in full until 2014. As such, we continue to pay taxes for something we never should have been part of in the first place.

One might question how much that would amount to, but suffice it to say this bond affected thousands of property owners in Johnson county. It is difficult to know who all was affected by this occurring as the county has destroyed many of the tax records going back to that time frame. Last year I gave written testimony on this same proposed bill, HB2580 which spelled out the costs to the tax payer. I would be happy to get that information again if you would like it.

There are several aspects of the proposed bill I feel need additional clarification and wording to protect the tax payer. While the bill allows for the refund of taxes paid when they should not have been, there is no time limit specifically given nor is there a penalty specified when that is not done. As such the city has no incentive to comply with the law. Rather they have the ability to assess a tax and collect revenue that is not due and make it into a guaranteed load by virtue of the governments being able to put a lien of the property if the taxes are not paid. After the taxes are paid, they can wait years for the legal process to resolve the issue to take its course in the courts. That is why I have been fighting this same issue for over 10 years.

I would encourage the inclusion of a time limit for when the taxes have to be repaid and a penalty severe enough to make it detrimental to the city to not have the detachment work in place at the time of annexation.

I thank you for you time and would be happy to answer questions.

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Attachment 2

Arlyn Briggs

STATE OF KANSAS

ANN E. MAH
REPRESENTATIVE, 53RD DISTRICT
3351 SE MEADOWVIEW DR.
TOPEKA, KANSAS 66605
(785) 266-9434

CAPITOL BUILDING TOPEKA, KANSAS 66612 (785) 296-7668



HOUSE OF

COMMITTEE ASSIGNMENTS
EDUCATION
HIGHER EDUCATION
LOCAL GOVERNMENT

Mr. Chair and Committee:

Thank you for hearing our bill today. It was brought to my attention that there is a provision in the statutes dealing with pawnbrokers and precious metal dealers that is outdated and should be removed. Currently, you must be a resident of Kansas for at least two years before you may be a pawnbroker or dealer of precious metals. An Attorney General's opinion from 1998 (attached) declared this provision unconstitutional under state law in that it denies a person's right to do business.

While I suspect cleaning up this provision will have a broader impact in the state, today I have a witness from the Topeka area. The residency requirement has put a halt to a business arrangement of a constituent of mine, Mr. Kurt Young. He will tell you more about that and the impact on local residents and the economy.

I appreciate your attention to this and look forward to the passage of the bill.

Attachment

House Local Government
Date 3-8-11
Attachment 3

Kan. Atty. Gen. Op. No. 98-44, 1998 WL 681229 (Kan.A.G.)

Office of the Attorney General State of Kansas Opinion No. 98-44

*1 September 15, 1998

Re: United States Constitution--Article IV, States' Relations--Section 2, Citizenship; Privileges and Immunities; Residency Requirement for Pawnbrokers and Precious Metal Dealers

Synopsis: The pursuit of a "common calling," the right to practice one's chosen profession, is a fundamental privilege protected by of Article IV, Section 2 of the United States Constitution, commonly referred to as the Privileges and Immunities Clause. The ability to engage in business as a pawnbroker or precious metal dealer is as much a "common calling" as any other occupation or profession and is thus a protected privilege under the Clause. In the absence of any known substantial rationale to justify Kansas residency for persons who wish to engage in business as a pawnbroker or precious metal dealer, the Kansas statutory provisions which establish such a requirement are found to violate Article IV, Section 2 of the United States Constitution. Cited herein: K.S.A. 16-708. U.S. Const., Art. 4, § 8.

The Honorable Doug Mays State Representative 54th District 1920 S.W. Damon Court Topeka, Kansas 66611

Dear Representative Mays:

Within the Kansas act regulating pawnbrokers and precious metal dealers, <u>K.S.A. 16-708</u> disqualifies non-resident persons, partnerships comprised of non-residents, and corporations controlled and owned by non-residents from receiving a license to engage in business as a pawnbroker or precious metal dealer. The applicable provisions of that statute provide that a license shall be granted or renewed to:

"(b) Any person who has not been an actual resident of the state of Kansas for at least two (2) years immediately preceding the date of his application;

"(i) Any partnership, unless all of the partners shall be eligible to receive a license as an individual; and "(j) A corporation, if any officer, manager, director or stockholder would be ineligible to receive a license as an individual."

As representative for the 54th district, you ask whether this residency requirement is constitutional under the Commerce Clause (Article 1, Section 8), the Equal Protection Clause (Amendment XIV) and/or the Privileges and Immunities Clause (Article IV, Section 2) of the United States Constitution. Because we conclude that this residency requirement is unconstitutional under the Privileges and Immunities Clause, we need not address its constitutionality in relation to the Commerce Clause or the Equal Protection Clause.

The first sentence of Article IV, Section 2 of the United States Constitution, commonly referred to as the Privileges and Immunities Clause, states:

"The Citizens of each State shall be entitled to all the Privileges and Immunities of the Citizens of the several states."

This Clause was intended to "fuse into one Nation a collection of independent, sovereign States." [FN1] To determine whether a state statute runs afoul of the Privileges and Immunities Clause, courts have developed a two part inquiry. Because not all forms of discrimination against citizens of other states are constitutionally infirm, the initial inquiry is whether the statute burdens one of those privileges and immunities protected by the Clause. [FN2]

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*2 "Some distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single Union of those States. Only with respect to 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally." [FN3]

A state may discriminate on the basis of residency, for example, with respect to the right to vote [FN4] and the right to hold public office. [FN5] However, the pursuit of a "common calling," the right to practice one's chosen profession, is one of the most fundamental of those privileges protected by the Clause. [FN6] The United States Supreme Court has repeatedly found that "one of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that state." [FN7] Whether the discriminatory burden on nonresidents takes the form of unequal licensing fees [FN8] or employment preferences granted only to residents, [FN9] the Clause has operated to make the burden unconstitutional. In our opinion, the ability to engage in business as a pawnbroker or precious metal dealer is as much a "common calling" as any other occupation or profession and is thus a protected privilege under the Clause.

However, as the court in Helminski continued:

"The conclusion that the disputed regulation discriminates against a protected privilege is only the first step of the inquiry. The privilege is not absolute and does not preclude discrimination where there is a "substantial reason" for difference in treatment. The inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them." [FN10]

Within recent years the United States Supreme Court addressed this issue in the context of an attorney residing in Vermont who was prohibited from practicing law in New Hampshire. [FN11] The justifications offered on behalf of New Hampshire for the residency requirement were that a nonresident attorney would be less likely to become, and remain, familiar with local rules and procedures; to behave ethically; to be available for court proceedings; and to do pro bono and other volunteer work in the state. The Court, however, determined that New Hampshire had neither advanced a substantial reason for its discrimination against nonresident applicants to the bar, nor demonstrated that the discrimination practiced bore a close relationship to its proffered objectives. Having initially found that the nonresident's interest in practicing law was a protected privilege, the Court concluded that New Hampshire's bar residency requirement violated the Privileges and Immunities Clause.

In the absence of any known substantial and closely tied rationale to justify Kansas residency for persons who wish to engage in business as a pawnbroker or precious metal dealer, we must likewise conclude that <u>K.S.A. 16-708(b)</u>, (i) and (j), which establish such a requirement, violate Article IV, Section 8 of the United States Constitution.

*3 We hasten to add, however, that where parts of a statute or a section of a statute can be readily separated, then the part which is constitutional may stand while the unconstitutional part is rejected.

"Whether the court may sever an unconstitutional provision from a statute and leave the remainder in force and effect depends on the intent of the legislature. If from examination of a statute it can be said that the act would have been passed without the objectional portion and if the statute would operate effectively to carry out the intention of the legislature with such portion stricken, the remainder of the valid law will stand. Whether the legislature had provided for a severability clause is of no importance. This court will assume severability if the unconstitutional part can be severed without doing violence to legislative intent." [FN12]

There is no reason to think that the Regulation of Pawnbrokers and Precious Metal Dealers Act, [FN13] would not have been passed without the residency requirements found in K.S.A. 16-708(b), (i) and (j). Additionally, absent such a residency requirement, the act still effectively operates to regulate pawnbrokers and precious metal dealers who engage in business in Kansas. Consequently, in our opinion the remaining parts of K.S.A. 16-708 may stand while the unconstitutional provisions are rejected. Very truly yours,

Carla J. Stovall Attorney General of Kansas

Camille Nohe Assistant Attorney General

- [FN1]. Toomer v. Witsell, 334 U.S. 385, 395, 68 S.Ct. 1156, 92 L.Ed.2d 1460 (1948).
- [FN2]. Helminski v. Supreme Court of Colorado, 603 F.Supp. 401 (D.C. Colo. 1985).
- [FN3]. *Baldwin v. Montana Fish & Game Commission*, 436 U.S. 371, 383, 98 S.Ct. 11852, 1860, 56 L.Ed.2d 354 (1978).
- [FN4]. Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 169, 42 L.Ed.2d 136 (1972).
- [FN5]. Kanapaus v. Ellisor, 419 U.S. 891, 95 S.Ct. 169, 42 L.Ed.2d 136 (1974).
- [FN6]. Baldwin v. Montana Fish & Game Commission, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978).
- [FN7]. Toomer, 334 U.S. at 396, 68 S.Ct. at 1156.
- [FN8]. Toomer, supra.
- [FN9]. Hicklin v. Orbeck, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978).
- [FN10]. Helminski, 603 F.Supp. at 406 (Citations omitted.)
- [FN11]. Supreme Court of New Hampshire v. Piper, 470 U.S. 271, 105 S.Ct. 1272, 84 L.Ed.2d 205 (1985).
- [FN12]. State, ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, 264 Kan. 293, 317 (1998), quoting Felton Truck Line v. State Board of Tax Appeals, 183 Kan. 287 (1958).
- [FN13]. K.S.A. 16-706 et seq.
- Kan. Atty. Gen. Op. No. 98-44, 1998 WL 681229 (Kan.A.G.)
- END OF DOCUMENT

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January 29, 2011

TO: Representative Ann Mah

FROM: A. Kurt Young

REF: Proposed change to 16-708

INTRODUCTION:

My name is A. Kurt Young and I reside at 6210 SE 61 St., Tecumseh, KS. 66542. I am 'officially' a retiree but in 2005 my business partner and I opened at new hotel at 5922 SW Topeka Blvd. in Topeka, KS and it is as a result of owning and managing that business that I have become aware of a problem that is costing Topeka, Shawnee County and the State of Kansas lost revenue as well as potentially every other city or county in the State.

BACKGROUND:

As you probably well know, the lodging business has suffered dramatically through this most recent recession—probably more than any other industry. As a result, competition for customers has become extremely competitive and as owners and managers we continue to look for every legitimate opportunity to generate revenue. In 2007 our property was first contacted by parties that wanted to rent our meeting room for the purpose of purchasing gold and silver. I do not recall how many times that first year we rented our meeting room (and a sleeping room) to individuals who 'set up shop' and advertised locally through the newspaper but as a result of that first experience it became a market that we cultivated in an effort to generate return traffic and ultimately business for our hotel. Over the next couple of years we had developed relationships with at least three different vendors who came to Topeka for this purpose. And in fact, by late 2009, it had become a significant source of revenue for our operation.

While other properties could obviously compete for this same business and I always stood the chance of losing it through the natural forces of competition, the vendors we dealt with had come to enjoy their stay at our property and had no desire to leave. In the end, each of these vendors through the process of conducting their business in our City is providing a consistent and regular stream of revenue into our City and State. Not only are they renting meeting rooms and sleeping rooms in hotels across the State, they are buying our fuel, eating in our restaurants, spending large amounts for newspaper ads and shopping in our stores. More importantly, they are consistently pumping large amounts of cash into the hands of our citizens in exchange for their 'precious metals'. Having participated in discussions with these vendors, I have learned that it is not uncommon for them to pay out anywhere from \$20K to \$50K in a community buying gold and silver from legitimate parties looking for an opportunity to sell in this economy.

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At one point in late 2008 or early 2009, I became involved in discussions with our local planning commission office due to a complaint from a local jeweler regarding the legality of this operation. Through that experience I became involved in a series of discussions that ultimately involved our local county clerk's office. The bottom line of all those discussions was that these vendors were told they were completely legal in what they were doing and there were no violations of any local ordinance.

In late 2010, the same jeweler complained but this time to the local authorities and ultimately it was discovered there is a law regarding this type of business that has been in existence since 1972. This series of laws beginning with 16-701 set the 'rules' that these vendors must comply with to conduct business in the State of Kansas. Through my discussions with these vendors it has become apparent that they all desire to comply with any State or local laws regarding their business. The law enforcement officer that inspected the required records of the vendor at my property in late 2010 indicated that the records were very meticulous and well within the requirements of the law.

PROBLEM:

The problem lies in the particular regulation (16-708) that requires that the applicant be a resident of the State of Kansas for two years prior to applying for a permit. Through my discussions with our local County counselor I was made aware of the fact that there was a 1998 Attorney Generals opinion that indicated that this residency requirement was unconstitutional. This residency requirement is still on the books, so to speak, because it was never challenged. Meantime, as a result of this requirement none of these vendors who have been operating at our property for the last three years will be able to return as a result of this residency requirement. That creates a significant cash loss for any hotel that has the potential of otherwise doing business with these vendors. In addition, we now lose all of the revenue that I referenced above and in fact the people who stand to benefit the most lose the opportunity to sell their gold and silver in a competitive environment and maximize their return. I understand why some jewelers do not want these vendors to come to town but our society has a long proven track record that competition is good.

SOLUTION:

Let's make the playing field legal for all who want to legally invest in this type of business. Let's officially remove what appears, in the eyes of at least one past Attorney General, the residency requirement for applicants who want to come to Kansas to do business.

February 7, 2011

TO: Local Government Committee

FROM: Bill Michaud, Director of Operations, Parrish Hotel Corporation

REF: Testimony on Proposed change to 16-708

INTRODUCTION:

My name is Bill Michaud and I reside at 3821 SE 33rd Terr. Topeka, KS 66605. I am the Director of Operations for Parrish Hotel Corporation and serve my community and industry in a variety of ways. I am a past President of the Topeka Lodging Association and remain an active member of that Association. I currently serve as the Board Chair for Visit Topeka and am on the Board of Directors for the Kansas Restaurant and Hospitality Association and also serve on the Kansas State University College of Hotel, Restaurant, Institution Management and Dietetics Advisory Council. Although my position on this issue is not the official position of any of the organizations of which I am affiliated, I have drawn from my broad experience participating in business and serving my profession to provide the background for this testimony.

BACKGROUND:

When 16-708 was presented to me, it was very apparent that this regulation was one in which the intent of the original law had out lived its useful life. I was surprised that such a law could have ever been passed, but was not surprised to see that the Kansas Attorney General had written an opinion in 1998 declaring this regulation unconstitutional. A quick search online revealed that the State of Kansas allows non residents to be granted business licenses for a variety of different types of commerce. Non-resident licenses are granted for Insurance, Real Estate, Contractors and Brokers amongst other professions that require licensure. Non residents of Kansas can attend our Universities and partake in our Hunting and Wildlife opportunities. Kansas even honors certain conceal and carry permits issued by other states. We live in a world today where barriers that restrict commerce are being broken down on a regular basis. In the hospitality business, we serve as host to companies of all shapes and sizes on a regular basis that cross state lines to serve the needs of Kansans and inject money into our local economies. Companies that exhibit at trade shows and companies that rent a small room to display the goods they have for sale. Pawn Brokers or precious metals dealers should not be treated any differently, as long as they fulfill the licensure and permitting requirements, residency should have no bearing on their ability to buy and sell in Kansas.

An example of a similar case can be found recently in Indiana in 2009. In this case the Indiana Alcohol and Tobacco Commission (ATC) voted to deny liquor and wine permits for a company based out of Miami. The Miami company had set up a subsidiary company in Indiana for purposes of conducting House Local Government

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Attachment 6

business in that state but the ATC denied the license based on the fact that the ownership of the subsidiary company were from "out of state". The Indiana Attorney General then issued an opinion that this denial was unconstitutional and a violation to the Commerce Clause of the US Constitution. This opinion overturned the Indiana Alcohol and Tobacco Commissions denial and ultimately resulted in the approval of the license for this company to distribute alcohol in Indiana. This case is nearly identical to the issue that 16-708 presents here in Kansas. If there is any exclusion of Pawn Brokers in the Commerce Clause, I am yet to find it.

I believe that the 1998 opinion by the Kansas Attorney General and the similar case referenced in the State of Indiana should be applied and that the residency requirement to obtain a pawn brokers license in the State of Kansas should be removed. Thank you for your time and for your consideration of this matter.

Indiana snubs booze heavyweight

<u>Indianapolis Business Journal, Sep 21, 2009</u> by <u>Schouten, Cory</u>

The Indiana Alcohol and Tobacco Commission has voted to deny liquor and wine permits for Southern Wine & Spirits of America Inc., the nation's largest liquor distributor, citing concerns over a track record of anti-competitive behavior.

The commission last year had informed the Miami-based company's local subsidiary, Southern Wine & Spirits of Indiana Inc., that it wasn't eligible to distribute liquor in Indiana "due to the owners being from out of state."

But the commission offered a new rationale for its formal denial on Sept. 15, after the Indiana Attorney General's Office issued an opinion that the state's arcane residency requirement for liquor distributors violates the commerce clause of the U.S. Constitution and would not stand up to a pending legal challenge.

Opponents of a permit for Southern fear the company would poach brands from existing Indiana-based distributors and launch a regional model, using hubs in Chicago and Louisville to serve markets here, thereby eliminating hundreds of local jobs. They also say booze prices for consumers would rise if Southern, which already distributes in 30 states including Illinois, Ohio and Kentucky, could wrest control of the Indiana market.

The company that stands to lose the most from Southern's entering the market, locally based National Wine & Spirits Inc., has fought most vigorously to stop it.

CEO James LaCrosse told the commission that Southern would put his company - Indiana's largest wine and spirits distributor, with more than 550 employees and 8,500 customers - out of business. He pointed to recently settled trade-practice violations by Southern subsidiaries in Illinois and New York.

My name is Frank Aguilar Jr. and my father and I are longtime Kansas residents and small business owners. I live in Overland Park and my father lives in Lenexa. We are both Pawnbrokers and Precious Metals Dealers in Kansas City Kansas and have owned a Jewelry Store and Pawnbroking business there for 15 years. It has recently come to our attention that the Local Government Committee is sponsoring House Bill 2041 and that the general purpose of the Bill is to remove the requirement that Pawnbrokers and Precious metals dealers be an actual resident of the state of Kansas for at least two (2) years immediately preceding the date of the application. I regret that I am unable to attend the hearing on Tuesday February 1st, however, I would like to provide the Committee with my thoughts on this proposed Bill.

While we can only speculate as to why Bill 2041 is being proposed, I can tell you that it caught our attention. In the past 18 months our industry has seen a dramatic increase in the number of both licensed and unlicensed individuals and Corporations attempting to take advantage of the rise in the price of Gold and Silver. We know that many of these companies do not have a Pawnbrokers or Precious Metals licenses as is required by the State of Kansas. It is becoming plainly aware to us that there are dozens of unscrupulous companies and individuals taking advantage of Kansas residents and sending the profits out of the State. Quite frankly we are worried that both licensed and unlicensed "fly by night"companies are "swooping in" to the State to "ride this temporary wave" and in the process potentially ruining the good standing of Kansas business that have been in the State for many years. Consequently when we noticed the tremendous influx of new Precious Metals businesses we assumed the State would be moving to enforce it's Statutes, not loosen them.

I want to be clear that in no way do we wish to stifle the free market or open competition, but we would like to be sure that our industry stays on the "straight and narrow". We believe KSA 16-708 was enacted to protect the best interests of it's residents, it's businesses and the State of Kansas. We do not find any parts of KSA 16-708, i.e. the residency qualification, to be unreasonable or contrary to law. The Precious Metals business is very unique and the Kansas residency requirement insures that it's dealers have a vested interest in the State and that they are in the business to better serve the community. Therefore, regarding the aforementioned, we would like to go on record as strongly opposing any changes to *Article 7: Regulation of Pawnbrokers and Precious Metals Dealers*, specifically KSA 16-708.

We sincerely hope that this Committee will endeavor to take our opinion under advisement and proceed with the proper due diligence in this matter.

With kind regards,

Frank Aguilar Jr. Vice President

American Collateral Lenders Inc. D.B.A. Sol's Jewelry Kansas City, Kansas

House Local Government Date 2-8-11
Attachment 7

Florence Deeter

20	m	
ro	111	

Jeff Tummons [hsofstuartltd@yahoo.com]

Sent:

Monday, January 31, 2011 9:15 PM

To:

Steve Huebert; shuebert77@sbcglobal.net Bill2041

Subject:

Dear Representative Huebert,

My family owns House of Stuart, Ltd. and Mission Pawn in Mission, Kansas. My father established the House of Stuart, Ltd. in 1964 specializing in rare U.S. coinage and bullion. Through many years he has created a business built on good reputation and integrity. He has served on the PNG (Professional Numismatic Guild) Board for twelve years and served a two-year term as president. This committee polices the coin industry and takes an active role in regulating businesses that aren't ethical. We are also active in the ANA (American Numismatic Association), the State organization, and ICTA (Industry Council for Tangible Assets). ICTA is an active group in Washington that closely watches the changes in the statues and keeps the industry abreast to new legislation. We only established Mission Pawn 19 years ago. We are also active in the National Pawnbrokers Association and the Kansas Pawnbrokers Association.

We are concerned about Bill 2041 currently being proposed to the House this coming Tuesday, February 1, 2011. The Bill will no longer require a two-year requirement of residing in Kansas to set up operations of pawnshops and/or precious metals dealers. This is a concern since our area has been experiencing some unlicensed groups setting up temporary locations throughout the Kansas City area (Overland Park, Lenexa, Mission, Olathe).

The Department of Agriculture weights and measures examiners have addressed some public complaints regarding honesty and ethics of some of these locations. There are just two examiners in the entire state of Kansas and a lot of territory to cover. We understand the State's goal was to try to regulate more efficiently by checking licenses and scale accuracy. We are surprised to learn of a more lenient ruling being proposed.

Many of the pawnshops throughout Kansas work together to help protect their communities and our reputations. We work closely with the ATF, and various police entities. We take pride in active roles in our communities. We question the integrity of the out-of-State institutions. We've heard, from customers, more bad than good about customer transactions. We do not oppose good competition. We've actually helped some of our competitors get up and running, helping to guide them with software, vendors, rules and regulations.

Our main concern is if any changes are made to Article 7: Regulation of Pawnbrokers & Precious Metal Dealers, specifically KSA 16-708, then it may be harder to police the integrity of the industry at the State level. We feel a responsibility to our community and industry to try to keep the competition equal and fair.

Thank you so much for your time and attention in this matter.

Regards,

Robin Tummons

House Local Government
Date 3-8-11
Attachment 8

LOCAL GOVERNMENT COMMITTEE CHAIRMAN HUEBERT TESTIMONY HB 2041

THIS IS IN REFERENCE TO BEING ABLE TO CONDUCT BUSSINESS IN KANSAS. I BUY GOLD SILVER COLLECTABLES AND AS THE LAW STANDS NOW YOU HAVE TO BE A RESIDENT OF KANAS FOR SOME TIME PERIOD TO BE ABLE TO DO THIS. ALSO THE REQUIREMENTS OF HAVING TO LEASE A PLACE TO CONDUCT BUSINESS IS A REAL PROBLEM. BUT THAT CAN BE WORKED OUT IF A PERSON COULD AT LEAST BE ABLE TO CONDUCT BUSINESS THERE. WE GET ALL THE REQUIRED LICENCSE THAT ARE REQUIRED EVERYWHERE WE GO. WE'VE NEVER HAD A PROBLEM AS WE PAY THE PEOPLE CASH. THE NAME OF THE BUSINESS IS ROADTREASURES. WE WOULD SURE LIKE TO BE ABLE TO DO SOME MORE BUSINESS THERE. THANK YOU

SINCERELY

CG MCPIKE

8504 HWY 24 TAYLOR MO 63454

House Local Government
Date 2-8-//
Attachment 9

Memorandum



TO:

The Honorable Steve Huebert, Chairman

House Local Government Committee

FROM:

William W. Sneed, Legislative Counsel

The State Farm Insurance Companies

SUBJECT:

H.B. 2119

DATE:

February 8, 2011

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies. State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insures one out of every three cars and one out of every four homes in the United States. Please accept this memorandum as our support for H.B. 2119, and further, our request for the Committee to act favorably on the bill.

At our request, this Committee introduced H.B. 2119. We believe that this is an issue that potentially has a statewide effect, and thus, we believe the Kansas Legislature should review those situations encompassed by H.B. 2119 to determine the state's public policy on this issue.

Background

As units of local government throughout the country face continuing financial pressures, many are examining new fees and fee increases to assist in balancing their budgets. Some local jurisdictions have enacted ordinances that bill drivers involved in a vehicle collision for the cost of emergency response services. These arrangements are often negotiated and administered by third-party billing companies who take a commission on the fees collected. Insurers are often called upon to pay these accident response fees on behalf of their insureds, even though the fees are not generally considered covered losses. Furthermore, these so-called "crash taxes" are a form of double taxation on local residents. This FAQ is intended to clarify the issues surrounding accident response fees and the impact they can have on constituents' insurance costs.

Don't insurers automatically pay these costs as part of the claim process?

It is not a given that insurance companies are responsible for all emergency response costs. Many insurance carriers, including State Farm, will generally cover medical services rendered by medical providers, but other charges for non-medical services may not be covered by the insurance contract. Each claim is investigated individually and is handled on its own merit.

• Does this practice impact the cost of insurance?

The practice of charging additional fees for essential emergency response services may shift the burden of this cost from all taxpayers to legally insured drivers. Over time, increased

555 South Kansas Avenue, Suite 101
House Local Government
Date $\sqrt{3}-8-1$
Attachment /O

The Honorable Steve Huebert, Chairman House Local Government Committee February 8, 2011 Page 2

claim costs as a result of these expenses can increase premiums, because one factor in determining insurance rates is claim expenses.

Wouldn't all drivers be charged a fee?

While it depends on the local ordinance, billing companies typically emphasize recovery of the fee from insurers, resulting in punishment of responsible drivers who follow the law and insure their vehicles. Uninsured drivers are basically given immunity from paying these fees. Meanwhile, insured drivers are penalized simply for obeying the law.

• What other kinds of problems can arise?

Vendors have been creative in billing practices, often by combining uncovered, non-medical charges with covered charges in an attempt to collect payment. Likewise, there is rarely a transparent connection between charges assessed and the actual cost of services provided. The existence of a crash tax can also incentivize multiple emergency departments to respond to an accident scene based on the opportunity for revenue generation rather than need.

• What happens if the insurance company doesn't pay—will individuals be forced to pay the fee?

Municipalities are targeting insurers for recovery of the fee and assume these charges will be paid. However, contingencies for nonpayment are rarely made. In some instances where insurers have refused to pay the crash taxes, billing companies have pursued collection directly from policyholders.

• Isn't emergency response a service provided by local government and paid for by local taxes?

Yes. In most local jurisdictions, emergency response services are already paid for with existing local tax dollars. Thus, crash taxes are a form of double taxation, which is why ten states — Alabama, Arkansas, Florida, Georgia, Indiana, Louisiana, Missouri, Oklahoma, Pennsylvania, and Tennessee — have already enacted laws restricting the imposition of local government crash taxes in their respective states.

Based upon the foregoing, my client contends that H.B. 2119 is a prudent step in protecting and treating equally all citizens in the State of Kansas. Thus, we respectfully request that the appropriate time this Committee act favorably on H.B. 2119.

The Honorable Steve Huebert, Chairman House Local Government Committee February 8, 2011 Page 3

I am available for questions at your convenience.

Respectfully submitted.

William W. Sneed

WWS:kjb



7045 College Blvd. Overland Park, KS 66211 Ph: 913-219-2296

Date: February 8, 2011

To: Representative Steve Huebert, Chairman House Local Government Committee

From: Lee Wright, Senior Governmental Affairs Representative

Re: Testimony on House Bill 2119

Position: Support

Mr. Chairman and members of the Committee, my name is Lee Wright and I am representing Farmers Insurance. Farmers' has been providing insurance to Kansas customers for over 80 years. We are the 3rd largest auto insurer in the state.

Thank you for this opportunity to speak in support of HB 2119, a bill that would prohibit municipalities from charging accident response service fees to those unfortunate motorists involved in an accident.

The charging of this accident fee, is often referred to as a "Crash Tax" because the practice of charging these fees is felt to be a form of dual taxation placed on motorists who believe their property and local taxes already cover the time and services of emergency responders.

Because the implementation of a Crash Tax is viewed as an unpopular practice with many citizens, ten states have already taken legislative action to prohibit this dual taxation. Included in those ten states are our border states of Missouri and Oklahoma.

I want to also emphasize that this legislation does NOT impact the ability of ambulance service providers to continue to bill for their usual and customary charges, as they always have.

While there is some dispute as to whether an accident response fee is covered under an auto insurance policy, I have been advised by our KS. Claims Manager that Farmers is currently paying crash tax fees charged against our policy holders. The fees are averaging about \$500 per accident.

At this time, Farmers is not including accident response service fees in determining auto rates in Kansas. However, if the practice of charging these fees becomes more widespread among Kansas cities, we will be forced to consider these additional claims costs in our Kansas customer's auto rates.

Farmers Insurance supports HB 2119 and we would encourage the Committee to recommend this legislation favorable for passage.

Thank you for your time.

House Local	Government
Date 2 -	-8-11
Attachment	11

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:dmonaoha@amfam.com



David Monaghan, CPCU Government Affairs Counsel

February 7, 2011

Representative Steve Huebert Kansas State Capitol Room 149-S 300 SW 10th Street Topeka, KS 66612

Re: American Family Insurance's position on House Bill 2119

Dear Chairman Huebert and Members of the House Local Government Committee:

American Family Insurance insures approximately sixteen percent of the automobiles and homes in the state. We offer insurance products through some 250 agents who reside throughout the state.

House Bill 2119 prohibits fire districts from imposing accident response service fees beyond the usual and customary charges for ambulance and emergency services.

In our view, if a fire department appears at the scene of an accident and does not render any emergency services, then the fire department should not be permitted to charge the drivers, vehicle owners or insurance companies for responding to the accident.

A new national poll indicates the public strongly opposes accident response fees. The Harris poll indicates that only one-third of those surveyed believe that charging accident response fees is appropriate. The support for such fees is even lower if insurance premiums increase due to such fees.

We support House 2119 and urge you to do so.

Sincerely,

David Monaghan

Da d A Mirecha

House Local Government
Date 3-8-11
Attachment /2



A Harris Interactive poll conducted by telephone for the Property Casualty Insurers Association of America found the following:

Three out of four agree accident response fees are unnecessary

Q. You pay taxes to cover emergency personnel time and service so accident fees are not necessary

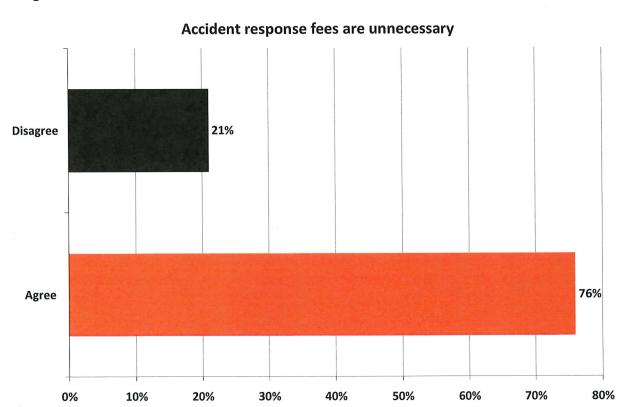
Total

Agree

76%

Disagree

21%





A Harris Interactive poll conducted by telephone for the Property Casualty Insurers Association of America found the following:

More than two out of three say billing only non residents is not appropriate

Q. Billing someone for an accident response fee, only if the driver is not a resident would be appropriate

Total

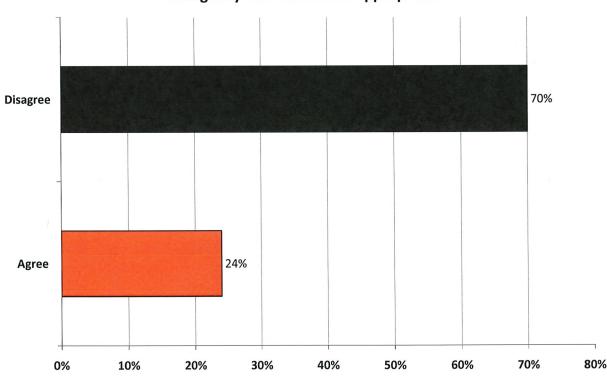
Agree

24%

Disagree

70%

Billing only non residents is appropriate





A Harris Interactive poll conducted by telephone for the Property Casualty Insurers Association of America found the following:

More than three out of five say charging accident fees is not appropriate

Q. Charging an accident response fee is appropriate

Total

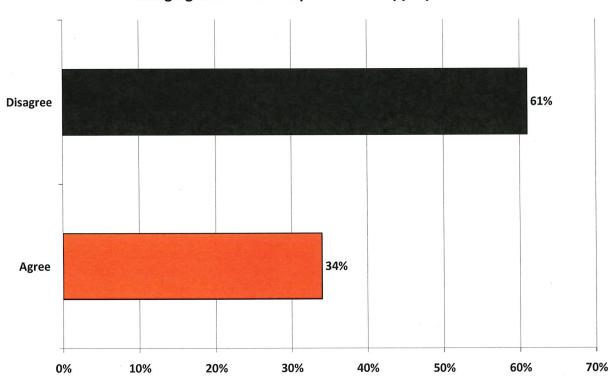
Agree

34%

Disagree

61%

Charging an accident response fee is appropriate





A Harris Interactive poll conducted by telephone for the Property Casualty Insurers Association of America found the following:

Two out of three oppose charging fees if it increased the cost of insurance

Q. I would support billing insurance companies for accident fees even if it increased the cost of insurance

Total

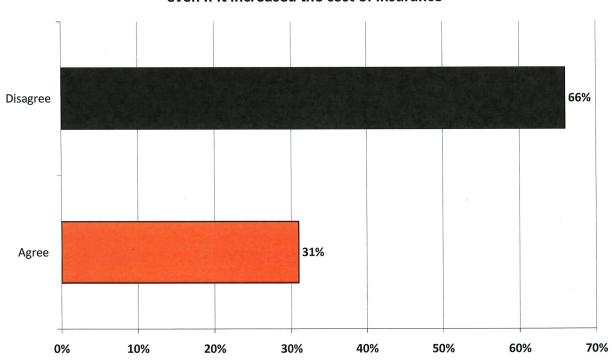
Agree

31%

Disagree

66%

Support billing insurers for accident fees even if it increased the cost of insurance





A Harris Interactive poll conducted by telephone for the Property Casualty Insurers Association of America found the following:

Tourism and businesses could be affected because significant numbers of people 44% would be reluctant to visit or drive in a town that charged accident response fees.

Q. You would be reluctant to visit or drive in a town if you knew they charged accident fees

Total

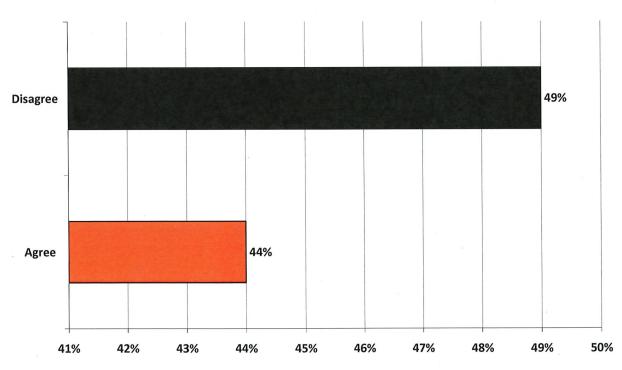
Agree

44%

Disagree

49%

Would be reluctant to visit or drive in a town that charged accident fees



Kansas Association of Insurance Agents



Testimony on HB 2119 Before the House Committee on Local Government By Kerri Spielman **February 8, 2011**

Thank you, mister Chairman and members of the committee, for the opportunity to offer written testimony in support of HB 2119. My name is Kerri Spielman and I represent the Kansas Association of Insurance Agents. We have approximately 440 member agencies across the state and another 110 branch offices that employ a total of over 2,500 people. Most of our agencies have a staff member who is licensed for life and health insurance and provide the coverage for their clients. Independent agents are free to represent a number of different insurance companies.

Accident Response Fees?

Accident response fees are fees assessed to insured drivers who have accidents. They are usually assessed by third party vendors to insurance companies. However, when insurance companies do not pay them, the drivers are sometimes billed.

Where They Came From

Accident Response Fees developed out of financial challenges that local units of government have experienced. Those in government have been sold on the idea that insured drivers who have accidents should pay for the expenses of emergency responders. It is, simply put, a tax on insured drivers who are following state law. Those who are uninsured do not get billed for accident response fees. In reality, it is a double tax, as citizens already pay taxes for emergency and first responders.

The Results of Accident Response Fees

Local units of government have often had a reality check with regards to accident response fees. Insurance companies do not pay them - they are not part of the policy provisions. Citizens of the municipality object to them as they already pay taxes for emergency and first responders. They have been less than successful, and ten states have already prohibited accident response fees. We would encourage Kansas to join the ranks of those states that have rejected double taxation of its citizens.

Thank you for the opportunity to offer this written testimony in support of HB 2119. Please let me know if I may answer any questions.





3601 Vincennes Road, Indianapolis, Indiana 46268 Phone: 317.875.5250 | Fax: 317.879.8408

122 C Street N.W., Suite 540, Washington, D.C. 20001 Phone: 202.628.1558 | Fax: 202.628.1601

February 7, 2011

The Honorable Steve Huebert Chairman House Local Government Committee Room 149-S State Capitol Building 10th and Jackson Topeka, Kansas 66612

Re: Letter in Support of House Bill 2119

Dear Chairman Huebert,

Thank you for this opportunity to provide PROPONENT testimony on HB 2119, legislation prohibiting municipalities from charging motorists with "Accident Response Fees" or "Crash Taxes."

Founded in 1895, the National Association of Mutual Insurance Companies (NAMIC) is a full service national trade association with more than 1,400 member companies that underwrite over 40% of the property/casualty insurance premium in the United States. In Kansas, 135 member companies, including 14 domiciled companies, underwrite 60% of the state's automobile insurance business.

NAMIC believes that Accident Response Fees are a form of double taxation typically applied <u>only</u> to those responsible drivers carrying auto insurance. NAMIC is not aware of any municipalities that have payment provisions for drivers who do not have insurance to pay for this service. Is it fair to penalize drivers who follow state law and carry insurance?

It is unfortunate that many municipalities across the country are experiencing extremely difficult economic circumstances. What is equally unfortunate is that many municipalities have been led to believe that passing ordinances that impose accident response fees will solve their budget problems. In the past several years, at least 30 municipalities have rescinded or voted down accident response fee ordinances once they have learned the truth about these fees. Most municipalities collect a small fraction of what they bill and the fees are very unpopular with residents.

Responding to and investigating auto accidents are functions of police departments supported by local taxes. Accident response fee proposals are based on the misconception that insurers will simply pay the bills that are sent, <u>but typical auto insurance policies do not cover expenses related to accident response</u>. Meanwhile, if insurers are forced to cover accident response, insurance rates will necessarily increase to pay for this coverage.

So far, <u>ten</u> states have enacted statutes to prohibit the collection of accident response fees, including Arakansas and Oklahoma

NAMIC strongly encourages the House Local Government Committee to approve this important proposal.

Again, thank you for this opportunity to express NAMIC's views on this important issue. If you have questions or require further information, please do not hesitate to contact me at (614) 262-4798 or via e-mail at jthesing@namic.org.

Sincerely,

Joe Thesing

Assistant Vice President-State Affairs

GLENN, CORNISH, HANSON & KARNS, CHARTERED

800 SW Jackson - Suite 900 Topeka, Kansas 66612 785-232-0545

TESTIMONY ON HB 2119 February 8, 2011

TO: Local Government Committee

RE: House Bill No. 2119

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information to the Committee in support of HB 2119 on behalf of the Kansas Association of Property and Casualty Insurance Companies, whose members are domestic insurance companies in Kansas, and also on behalf of PCI, the Property Casualty Insurers Association of America, with over 1,000 member companies across the country writing about 40% of the property-casualty market.

We support the provisions of House Bill 2119 as the proposed language is needed to prevent ordinances from being adopted by municipalities to impose accident response fees, which result in a form of double taxation in our state. Generally, municipalities are led to believe that imposing these fees will help solves their budget problems. However, they soon face the public outrage that comes from being charged a fee for services already paid with their taxes. Some municipalities have tried to impose fees on people's insurance, but soon find that the hoped for revenues fail to materialize because insurance generally does not cover accident response fees or expenses. They also face a problem with unequal protection under the law since the fees are only applicable to those who carry insurance.

Therefore, ten states have already enacted statutes to prohibit collection of such accident response fees, including our neighboring states of Arkansas and Oklahoma. Attached is a position paper developed by PCI providing further explanation on this matter. We appreciate your consideration of our position and would urge your support of this Bill.

Respectfully,

David A. Hanson

Nouth. Hausa

House Local Government

Date 2-8-11

Attachment 15

Key Issue: Accident Taxes

MOTORIST FEE FOR EMERGENCY RESPONSE SERVICES WOULD PENALIZE TOURISTS

More and more local governments nationwide are implementing a hidden fee, sometimes called a crash tax or accident tax, for emergency response services. Faced with budget crunches, many municipalities are using accident response fees as an opportunity to increase revenues without formally raising taxes. But public safety is a basic role of local government, and these fees take advantage of consumers.

Double Taxation

- Accident taxes amount to nothing more than double taxation. Emergency response services are already paid for by property and other local taxes.
- These fees run contrary to the idea of paying taxes to receive basic local government services.
- By billing for police and firefighting services, governments are imposing hidden taxes on consumers that could ultimately raise insurance costs for everyone.

Costly Consequences

- The role of emergency responders should be to serve and protect not serve and collect.
- While costs vary from city to city, fees could range from \$100 to over \$2,000 for response services. The "average" charge is expected to be approximately \$200.
- Potential abuses that could be created from these programs include arbitrary and unreasonable charges, minimum number of responders sent to an accident scene, or over responding to minor accidents.
- The insurance industry is committed to paying all appropriate bills and charges associated with an accident. However, these accident response fees add unnecessary costs to insurance coverage that could ultimately affect the premiums that you pay

Accident Tax Victims

- These ordinances are too often passed without public input or consideration and take advantage of unsuspecting drivers and their insurers at a vulnerable time after being involved in an auto accident.
- In some cases, the fees are only charged to drivers who have insurance, which violates constitutional equal protection guarantees.
- Other accident tax supporters want to selectively bill only non-resident accident victims.
- Travelers and tourists visiting these municipalities would be penalized.

Vendor-Driven Practice

- Across the nation, local governments are being approached by private collection companies who promise a cash windfall in exchange for a simple ordinance.
- The vendor bills the insurer on behalf of the local government, and if the insurer doesn't pay, the vendor goes after the driver.
- The vendor takes a fee of 10% or more.

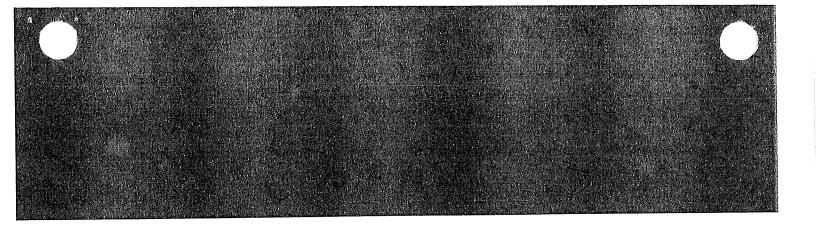
Collaborative Solution

- Alabama, Arkansas, Florida, Georgia, Indiana, Louisiana, Missouri, Oklahoma, Pennsylvania and Tennessee have passed laws or resolutions prohibiting municipalities from charging these fees.
- Motorists, auto insurers and state and local lawmakers must work together to put an end to accident taxes.

For more information, visit www.accidenttax.com or www.calcrashtax.com

PCI is the nation's premier insurer trade association, representing over 1,000 companies that write 37.1 percent of the nation's automobile, homeowners, business, and workers compensation insurance. The association is also an advocate for sound public policy that fosters a healthy and competitive insurance marketplace. In addition, PCI's wholly owned subsidiary, the Independent Statistical Service, Inc. (ISS) offers a statistical reporting service for 17 property casualty lines

© 2008 Property Casualty Insurers Association of America



Accident Response Fees: Say "No" to double taxation and higher insurance premiums



Property Casualty Insurers Association of America

Shaping the Future of American Insurance

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	Summary of legislative bans on Accident Response Fees		

PCI is comprised of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write over \$180 billion in annual premium and 37.4 percent of the nation's property casualty insurance. Member companies write 44.0 percent of the U.S. automobile insurance market, 30.7 percent of the homeowners market, 35.1 percent of the commercial property and liability market, and 41.7 percent of the private workers compensation market.

Introduction

In municipalities throughout the United States, police and fire protection and emergency medical response services are provided by local governments or volunteer organizations. Through a wide variety of programs, these services are dedicated to assisting communities and safeguarding the quality of people's lives. Jurisdictions vary with respect to the funding of these services - general property taxes, local income taxes and general sales taxes are typically used to fund most local services, but transient taxes and other taxes earmarked specifically for services may also be levied. Other existing funding mechanisms include borrowing, leasing, benefit assessment charges, sales of assets and services, and cost sharing and consolidation.1

On average from 2002 to 2006, there have been more than 12.4 million traffic accidents on America's streets each year.² When motor vehicle accidents occur, police are almost always called to the crash scene in order to investigate the situation, gather the necessary information and issue any citations. For most crashes, only very routine traffic control and the filing of an accident report are necessary. Some traffic accidents can also require the use of firefighters and emergency medical services (e.g., paramedics and ambulance transit) to tend to the medical needs of injured victims and prevent further injuries and damage. In addition to property and local income taxes that help pay for these first-responder services, fees are currently attached to motor vehicle registrations, traffic citations and other vehicle-related programs.

Over the last few years, "accident response fees" have been introduced as another means to help finance routine police and fire runs to auto accident scenes, whether someone is injured or not. In light of the struggling economy, these fees have developed as a result of mounting pressures placed on local governments to keep their budgets balanced without having to formally increase taxes. Part of their impetus stems from certain third-party collection agencies that have encouraged jurisdictions to implement charge-back programs whenever police or fire departments are called to duty. These fees - also known as "rescue fees" or "cost recovery programs" or by critics as "crash taxes" - are expected to be paid by those who cause auto accidents, either directly or through their insurance companies.

Federal Emergency Management Agency and United States Fire Administration, Funding Alternatives for Fire and Emergency Medical Services, www.usfa.dhs.gov/downloads/pdf/publications/fa-141.pdf

U.S. Census Bureau, The 2009 Statistical Abstract, "Motor Vehicle Accidents - Number and Deaths: 1980 to 2006"

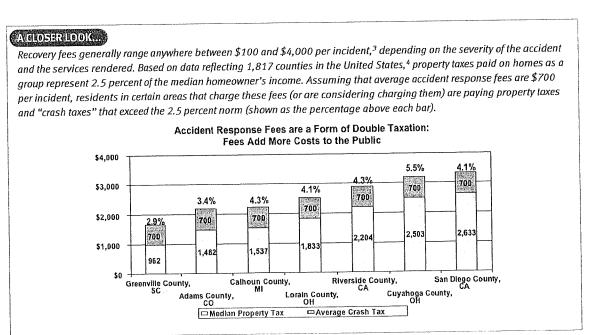
Accident Response Fees

The introduction of accident response fees has caused much debate and controversy in many local communities. Some groups believe they are legitimate user fees that are a necessary and reasonable approach to help maintain vital public services. Other groups feel they are turning local police and fire departments into profit centers at an additional cost to the citizens whom they are already expected to serve and protect. The following provides an overview of key issues in the debate regarding accident response fees.

At Issue: Aren't Accident Response Fees a form of double taxation?

In some local communities, accident response fees are being implemented to offset declining governmental budgets and build new revenue streams. These additional funds are used to recover the costs of responding to auto crashes, which can reach into hundreds of thousands of dollars each year in some areas. However, public safety is a basic role of government paid for by property and other local taxes. Even those who work for volunteer fire departments are compensated as employees during the time they are responding to or attending an emergency scene. Like "career" police and firefighters, volunteer organizations receive financial support from taxes raised in local areas as well as corporate and other private donations, federal grants, and other assistance from auxiliary members, or firefighters' associations.

In those communities where accident response fees are charged, it is unwise public policy to require additional funding for first-responders when the public is already paying for these services. Since local municipalities calculate their tax structure based on the services provided, adding charge backs as a source of revenue is a form of double taxation. In other words, the accident response fees levied by local governments on their constituents amount to nothing more than redundant "back door" taxes.



- Competitive Enterprise Institute, "CEI Florida Insurance Director Urges Approval of 'Crash Tax' Ban," June 15, 2009
- Tax Foundation, "Property Tax on Owner-Occupied Housing by County," reflecting all 1,817 counties in the United States with populations greater than 20,000 (as of July 1, 2007). There are 3,077 total counties in the nation. Also included are some incorporated cities that belong to no county, but have populations greater than 20,000.
 continued

At Issue: Who benefits from Accident Response Fees?

Accident response fees are recouped to pay for a broad gamut of items, including the amount of time spent by police and firefighters at the accident scene administering care, controlling traffic and setting up a safety zone, compiling information for the accident report, extricating injured victims, and dousing engine fires; ambulance transportation; clean-up and related expenses; and even the gasoline needed to reach the site. In general, the money collected is placed into a special fund earmarked for public safety personnel and their supplies, equipment and programs.

Although most of the money regained covers the above items, hundreds of third-party collection agencies that bill insurance companies and motorists are keeping a portion of the amount collected - generally 10 percent and perhaps as high as 15 percent in some places. These agencies, which could eam up to \$400-\$600 per incident, are essentially profiting from people's misfortunes. Yet in many instances, the local communities have found that the amount collected has fallen short of expectations, while receiving significant public criticism.

A CLOSER LOOK...

Erlanger, KY

In January 2008, the city of Erlanger, Kentucky decided to bill out-of-town motorists for accident responses. The city expected to collect \$250,000 per year from visitors based on an average bill of \$250 per accident. Erlanger officials planned to use the money for police and fire salaries. However, by August 2009, the city dropped the policy. According to the Kentucky Post, officials said the billing policy has become "a public relations nightmare" and is not bringing in as much as originally projected.

Radnor, PA

After harsh criticism, Radnor Township in Pennsylvania not only ended its program of charging accident response fees, but it refunded the more than \$46,000 collected from out-of-town motorists. According to the Philadelphia Inquirer, in 2006 the township hired Cost Recovery Corporation (in Dayton, Ohio) on commission to collect the fee from motorists or their insurance company. Township Commissioner William Spingler was reported to say that the company was too aggressive in its collection practices, sending dunning letters and threatening people's credit. For township officials, the public relations black eye was not worth the fees collected.

Wyoming, MI

The Wyoming City Council in Michigan on a close vote approved an ordinance to institute an accident response fee, but after being in effect for slightly more than a year it scrapped the policy. The city anticipated that Cost Recovery Corporation, with its 10 percent commission, would help bring in \$200,000 to bolster its budget. Revenues fell far short of expectations and the town was subject to months of bad publicity, while Cost Recovery collected its commission.

At Issue: Who pays for Accident Response Fees?

Auto insurance usually covers reasonable expenses incurred for necessary medical and funeral services⁵ sustained by individuals in an accident, but may not cover public safety responses. This fact runs counter to what some collection agencies tell local governments. These vendors encourage municipalities to use their services to recoup the money from insurance companies whose policyholders are responsible for traffic accidents. Local officials are told that consumers do not need to worry, since their insurers will take care of the payments especially since they benefit from the accident information gathered by the police.

But assessing insurers for services that are not typically part of the insurance contract is an inappropriate governmental interference. More importantly to policyholders, if insurance companies do pay accident response fees, these costs will accumulate over time and could ultimately be passed on to them in the form of higher premiums with no added benefits.

If insurance companies do not pay the accident response fees, it is possible for collection agencies to bill the responsible motorists directly, sometimes using aggressive scare tactics. Being asked to pay a surcharge creates confusion and ill feelings among policyholders towards their insurance companies as well as the local governments. Because the costs related to police and fire responses can be quite expensive (ranging from \$100 to \$4,000 per crash⁶), many people may not be able to pay these fees and are in danger of having their credit standing lowered.

Furthermore, police officers who investigate traffic accidents are usually required by law to submit motor vehicle accident reports so they are not prepared solely for the benefit of insurance companies. In fact, the primary purpose of these reports is to assist those involved in accidents in case lawsuits are filed. Personal injury lawyers, hospitals and chiropractors also use accident reports, as do state and local law enforcement officials for statistical reporting requirements and local media for news reports.

Regardless of whether or not insurance companies should pay for emergency response services, if they feel continued pressure to do so in the future, these additional surcharges most likely will be built into their ratemaking formulas. Higher costs typically mean higher auto insurance rates for all.

At Issue: Should Accident Response Fees apply only to non-resident at-fault motorists?

According to Regina Moore, president of Cost Recovery Corporation, collection agencies are billing for motorists' negligence and not for the accidents themselves. Proponents believe that imposing fees on negligent drivers is a fair system because those responsible for traffic accidents should pay for these services.

However, it is not always clear who is at fault. Deciding liability based on what is usually a very limited investigation by a law enforcement official raises troubling due process questions; such decisions may be inappropriate as they usurp the role of the judicial process. In addition, if more than one person is responsible for the accident, determining the appropriate allocation of liability and how much to charge each person may be difficult.

In many localities the majority of auto accidents involve non-residents. These non-residents who cause accidents may nevertheless work in the area. As such, they too could be double-taxed by having to pay a percentage of their wages to the municipality as well as having to pay for public safety services. And as this issue is examined further, it is important to understand that some local governments also expect at-fault motorists who reside in their community to be surcharged for emergency responses.

Another inconsistency regarding accident response fees is that uninsured motorists who are at fault do not get billed at all. This constitutes illogical and inequitable treatment, whereby law-abiding citizens who purchase insurance and are in an accident are required to pay while uninsured drivers are exempt from this special assessment. Responsible drivers who have insurance end up subsidizing those without insurance.

- 5 Ambulance transportation is usually covered in the Medical Payment portion of auto insurance policies.
- Competitive Enterprise Institute, "CEI Florida Insurance Director Urges Approval of 'Crash Tax' Ban," June 15, 2009

Angry consumers are calling for a ban on Accident Response Fees

In most states, accident response fees are still legal and are gaining momentum. Since their inception, they have been adopted by municipalities in 26 states as an alternative way to earn revenues.7 Despite the growing popularity of recovery fees, especially in areas that are employment centers or have major highways running through them, the public has been leading the charge in contacting their local officials and state legislators to object to these programs. As such, some communities have rescinded their ordinances on the use of accident response fees. Some states are even starting to put pressure on local governments to end this activity; so far, nine states have passed legislation or a resolution to ban auto accident cost recovery programs and others have initiated similar activities.

In 2009, the four states that banned crash taxes are:

- Arkansas (HB 1895, now AR Act 973), enacted on April 6, 2009
- Florida (SB 2282), effective July 1, 2009
- Oklahoma (Section 10-118 of Title 47, added to HB 2013), enacted on May 28, 2009 and effective immediately
- Louisiana (House Concurrent Resolution, HCR 147), passed July 2009

In 2008, the five states that banned crash taxes are:

- Georgia (SB 348), signed on May 16, 2008 effective immediately
- Indiana (SB 81, bans police fees), enacted July 1, 2008
- Missouri (SB 66), effective January 1, 2008
- Pennsylvania (HB 131), effective February 18, 2008
- Tennessee (HB 2547 Public Chapter No. 651), effective March 28, 2009

ACLOSER LOOK...

Case Study: Florida's Fight to Ban Accident Response Fees

By October 2008, at least 24 local governments in Florida were known to charge accident response fees. But with growing budget problems throughout the state, the number of local governments considering these fees was quickly expanding. Local residents and insurance groups such as the Property Casualty Insurers Association of America (PCI) attempted to monitor the deliberations of local governments and when a proposed ordinance would surface, they would work to educate local officials. While citizens had spoken out and stopped ordinances in Tampa and the town of Davie, with 412 municipalities in the state, it would be virtually impossible to challenge each ordinance at the local level.

In January 2009, the city of Tallahassee adopted an ordinance that permitted the fire department to begin charging fees. The ordinance was approved despite plenty of opposition. As the 2009 state legislative session drew near, the issue continued to attract controversy in several other municipalities. PCI and local residents continued to press the case in the media and with state and local officials.

With the backdrop of citizen outrage and a sense of unfairness regarding the practice, legislation calling for a statewide ban on charging accident response fees was sponsored by Sen. Mike Bennett (R-Bradenton) and companion legislation was sponsored by Rep. Nick Thompson (R- Ft. Myers).

Additionally, groups such as the Associated Industries of Florida strongly supported SB 2282. Hundreds of motorcyclists also demonstrated their solidarity by holding a "Freedom Rights Rally" at the Florida State Capitol on April 13, 2009, seeking to ban accident response fees. Residents contacted lawmakers and testified before legislative hearings to express support for the ban. On July 16, 2009, Governor Charlie Crist signed SB 2282 and delivered a major victory for Floridians by ending the "accident tax."

PCI, as stated in CNNMoney.com, "The Fender Bender Tax," June 19, 2009. The precise number of state municipalities that have implemented accident response fees is unknown.

Conclusion

In conclusion, there is no doubt that police and fire services are necessary and invaluable to the safety of communities. As part of their duties, for which they are already getting paid, the public is grateful that first-responders can be called on to investigate and assist in auto crashes. However, the motto of these officials should be to "serve and protect," not "serve and collect."

Accident response fees are not an equitable distribution of the costs of emergency services related to auto accidents. These fee systems constitute a form of double taxation, are incongruous since they apply to some people but not to others, and are likely to result in insurance rate increases. Although many local governments are struggling to find the money to pay for services which they are expected to perform, these revenues should not come from those involved in auto accidents. Requiring payment from anyone who recently experienced a traumatic crash is unconscionable; it literally and figuratively adds insult to injury. During this time of economic hardship, the public should not be overburdened with having to pay additional charges for emergency responses to traffic accidents when property taxes and local income taxes are already being used to pay for these services.

Appendix

SUMMARY OF STATE BANS ON ACCIDENT RESPONSE FEES

AR	27-53-307	Accident response service fee. (a) As used in this section:
		(1) "Accident response service fee" means a fee imposed for the response or investigation of a motor vehicle accident by a law enforcement agency; and
		(2) "Entity" means the state, a political subdivision of the state, other governmental entity or agency, or a department of a governmental entity. (b)(1) Notwithstanding any provision of law to the contrary, a person or entity shall not impose an accident response service fee on or from an insurance company, the driver or owner of a motor vehicle, or any other person.
		(2) Subdivision (b)(1) of this section shall not limit a county, municipality, or other local government from billing ambulance services provided in response to or in conjunction with the emergency response to a motor vehicle accident to an insurance company, the driver or owner of a motor vehicle, or any other person.
FL	125.01054, 166.0446	A county may not impose a fee or seek reimbursement for any costs or expenses that may be incurred for services provided by a first responder, including costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident, except for costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management, and costs for transportation and treatment provided by ambulance services licensed pursuant to ss. 401.23(4) and 401.23(5).
GA	33-8-8.2	(e) It shall be in contravention of public policy for a county or a municipal corporation that levies taxes for county or municipal purposes on foreign, alien, and domestic insurance companies doing business in this state, as provided in subsection (a) of this Code section, to impose additional taxes or any other fees of any kind for services provided by such county or municipal corporation to such insurance companies for accidents involving motor vehicles except for the following:
		(1) Where the coverage for such services is expressly provided by an insurance company to the insured and the services are lawfully billed to the insured;
		(2) Where emergency medical services are provided to the insured by the county or municipal corporation, whenever the insured's medical insurance covers the services provided and the insured assigns the right to collect to the service provider; or
		(3) Where other services are provided to the insured by the county or municipal corporation which are expressly authorized by state or federal law to be billed directly to an insurance company.
IN	9-29-11.5-3	Imposition or collection of accident response service fee is prohibited. Sec. 3. A political subdivision or a local law enforcement agency of a political subdivision may not impose or collect, or enter into a contract for the collection of, an accident response service fee on or from:
		(1) the driver of a motor vehicle; or
		(2) any other person involved in a motor vehicle accident.

continued

LA	HCR 147	Directs local governing authorities and emergency service providers to cease the practice of imposing accident response fees, and states the legislative intent that the shifting of the cost of emergency service to those who use the service undermines the entire scheme established in state law for funding these critical areas of government responsibility. Precludes the following from its application: (1) charging a user of emergency services for medical care, including medical transportation, that would ordinarily be the patient's responsibility, and (2) charging a user of emergency services for such services if his actions created an unusual or extraordinary expense on the part of the responder.
МО	374.055	3. Notwithstanding any other provision of law to the contrary, no person or entity shall impose an accident response service fee on or from an insurance company, the driver or owner of a motor vehicle, or any other person. As used in this section, the term "accident response service fee" means a fee imposed for the response or investigation by a local law enforcement agency of a motor vehicle accident.
ок	Title 47 Sec. 10- 118	A. Notwithstanding any other section of law to the contrary, no person or entity shall impose an accident response fee for the response or investigation of a motor vehicle accident by law enforcement.
		B. For purposes of this section, "accident response fee" means a fee imposed for the response or investigation of a motor vehicle accident and does not mean any fee otherwise specifically authorized by Law.
PA	Title 53, Ch. 13 G1392	(a) ProhibitionA municipality shall not charge a fee for or seek reimbursement of costs or expenses incurred as a result of municipal police responding to a motor vehicle accident, including, but not limited to, costs incurred for labor, materials, supplies or equipment used or provided in the response.
		(b) LimitationSubsection (a) shall not be construed to authorize the imposition of any fee other than those fees or charges for furnishing copies of reports under 75 Pa.C.S. § 3751 (relating to reports by police) in the form prescribed by the Department of Transportation and for recovery of the actual costs in furnishing copies of any additional information separate from that provided in 75 Pa.C.S. § 3751 and any other fees or charges authorized in State law.
TN	55-10-108	(h)(1) As used in this subsection (h):
		(A) "Accident response service fee" means a fee imposed for the response or investigation by a law enforcement agency of a motor vehicle accident; and
		(B) "Entity" includes a governmental entity or agency or a department of a governmental entity.
		(2) Notwithstanding any other law to the contrary, no person or entity shall impose an accident response service fee on or from an insurance company, the driver or owner of a motor vehicle, or any other person. Nothing in this part prevents any county, municipality or other local government from billing an insurance company, the driver or owner of a motor vehicle, or any other person for ambulance services provided in response to or in conjunction with emergency response to motor vehicle accidents.