

MINUTES OF THE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on February 15, 2011, in Room 152-S of the Capitol.

All members were present.

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the Committee:

Lee Wright, Farmers Insurance
Bren Abbott, Farmers Insurance
David Hanson, Kansas Assn. Of Property and
Casualty Insurance Companies in Kansas
and PCI
David Monaghan, American Family Insurance (written only)
Brad Smoot, American Insurance Association (written only)
Bill Sneed, State Farm Insurance Cos. (written only)

Others attending:

See attached list.

The Chair called the meeting to order and introduced the newest committee member, Senator Allen Schmidt, who will be the ranking minority member.

The Chair presented Minutes of February 3, 8, 9, and 10 for committee approval. Senator Steineger moved approval of the minutes. Senator Longbine seconded the motion. Motion was approved.

Hearing on:

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

Melissa Calderwood, Legislative Research, gave an overview of **SB 136**. She stated **SB 136** would prohibit an individual who does not maintain the required personal injury protection coverage from collecting non-economic damages if the individual sustains injuries in an automobile accident. The bill would apply to individuals whose insurance coverage has been expired for more than 30 days, she said.

Lee Wright, Farmers Insurance, testified in support of **SB 136**. Mr. Wright stated that this bill applies only to non-economic damages. He said only pain and suffering are not covered. He noted that the concept of the legislation is relatively simple. He said 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 the vehicle. The uninsured driver is not eligible to receive compensation for non-economic damages. **(Attachment 1)**

Lee Wright then introduced Bren Abbott from Farmers Branch Legal Office. He said Mr. Abbott could provide the committee with additional information as his law firm regularly handles motor vehicle accident litigation, including claims involving uninsured motorists.

Mr. Abbott stated that **SB 136** is a bill that limits in two situations when an injured person can make a claim for non-economic losses. The act is relatively simple and is designed to promote two concepts, (1) an individual who owns a vehicle of the type that is required to have insurance, but does not, should not benefit from those who purchase insurance; and (2) an individual who is convicted or pleads guilty to refusing or failing a test for alcohol or drugs following an accident or is convicted of driving under the influence of alcohol or drugs should be allowed to make a claim only for economic damages. Mr. Abbott added that the proposed act appears to reinforce the public policy that we want drivers to be

CONTINUATION SHEET

The minutes of the Financial Institutions & Insurance Committee at 9:30 a.m. on February 15, 2011, in Room 152-S of the Capitol.

insured and at the same time, protect those who make a one-time mistake. It also allows those who follow the law to be fully compensated for their injuries. (Attachment 2)

David Hanson, on behalf of the Kansas Association of Property and Casualty Insurance Companies, testified in support of **SB 136**. Mr. Hanson stated that this bill restricts the type of damages an injured owner or operator of an uninsured vehicle can recover in Kansas in the event of an automobile accident. (Attachment 3)

David Monaghan, American Family Insurance, Brad Smoot, American Insurance Association and Bill Sneed, State Farm Insurance Cos. presented written testimony only in support of **SB 136**. (Attachments 4, 5, and 6)

Meaghan Dalton, Kansas Association for Justice, testified in opposition to **SB 136**. She stated this bill punishes Kansas drivers for failing to maintain mandatory auto coverage for at least a year or more and have a break in coverage of greater than 30 days just prior to an auto accident. She said **SB 136** eliminates a legal right to seek recovery of non-economic loss in court, no matter how serious the injuries or how negligent or wrongful the other driver was in causing the accident. She added that this bill will punish more law abiding Kansans than drivers who intentionally disregard mandatory coverage laws. She said **SB 136** eliminates legal rights to seek recovery of loss in court. She added that this is a punishment that does not fit the crime.

The Chair closed the hearing on **SB 136**.

The next meeting is scheduled for February 16, 2011.

The meeting was adjourned at 10:30 a.m.

DATE: 2-15-11

[illegible]



FARMERS

7045 College Blvd.
Overland Park, Ks. 66211
Bus 913.219.2296
Fax 913.339.9558

February 15, 2010

To: Senator Ruth Teichman, Chairperson
Senate Financial Institutions & Insurance Committee

From: Lee Wright, Governmental Affairs Representative

Re: Testimony on Senate Bill 136 Position: Support

Madam Chairperson 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 the 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 the vehicle. The uninsured driver is not eligible to receive compensation for non-economic damages (pain and suffering).

This type of legislation has often 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.

No Pay, No Play 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.

Members of the Senate FI&I Committee in 2009 may recall this legislation was approved for passage by the FI&I Committee. The measure went on to be passed by the full Senate, but then stalled out in the House.

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.

*FI&I Committee
2-15-11
Attachment 1*

**SENATE FINANCIAL
INSTITUTIONS AND INSURANCE COMMITTEE
SENATE BILL 136
TESTIMONY BY BREN ABBOTT
ABBOTT, DAVIDSON & SOUTHARD**

Senate Bill 136 is a bill that limits in two situations when an injured person can make a claim for noneconomic losses. The act is relatively simple and is designed to promote two concepts:

1. an individual who owns a vehicle of the type that is required to have insurance, but does not, should not benefit from those who purchase insurance; and
2. an individual who is convicted or pleads guilty to refusing or failing a test for alcohol or drugs following an accident or is convicted of driving under the influence of alcohol or drugs should be allowed to make a claim only for economic damages.

The first situation only applies to the person who is an owner of a motor vehicle that is required under Kansas law to have insurance but does not. The proposed act has a safety net for those individuals who inadvertently allow a policy to lapse. The bill specifically exempts from this act an individual who has failed to maintain coverage for a period of 30 days or less and who had maintained continuous coverage for at least one year immediately prior to the failure to maintain coverage.

The second part of the law involves a situation when a drunk driver is involved in an accident.

As a civil defense attorney, I spend a significant amount 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 them while under the influence of alcohol and/or drugs.

We often hear the phrase "personal responsibility" used to justify legislation and I cannot think of a better phrase to use to describe this bill. Currently, motorists that are illegally uninsured or intoxicated can collect damages for pain and suffering, which certainly drives up the price of auto insurance for law-abiding motorists. This bill provides another incentive for people to live by the rules expected of them.

In arguing against this bill, I have heard the example used of a single parent letting his or her insurance temporarily lapse so that she could put food on the table or the one time bad judgment of drinking and driving. It is important to note that there is protection under the law for these situations. The proposed act allows the injured party to collect what is termed "economic damages." These damages have been defined to include past and future medical expenses, past and future lost wages and loss of earning capacity. The

*FI&I Committee
2-15-11
Attachment 2*

Kansas Supreme Court has ruled that loss of services, care and guidance can also be economic damages. The prohibition is compensation for pain, suffering, disabilities, disfigurement and any accompanying mental anguish.

The proposed act appears to reinforce the public policy that we want our drivers to be insured and at the same time, protect those who make a one time mistake. It also allows those who follow the law to be fully compensated for their injuries.

I submit to you that it is time to tell those who are illegally uninsured that they cannot play by the same rules as those who pay for the insurance. I urge you to support the No-pay, No-play bill.

Law Offices
GLENN, CORNISH, HANSON & KARNS
CHARTERED

DAVID A. HANSON
dhanson@nomb.com

800 SW JACKSON ST. - SUITE 900
TOPEKA, KANSAS 66612-1259

LARRY G. KARNS
lkarns@nomb.com

TELEPHONE NO. 785-232-0545
FAX No. 785-232-0005

Of Counsel
MARVIN W. MAYDEW
mmaydew@aol.com

RALPH F. GLENN - (1988)
L. M. CORNISH - (1999)

February 14, 2011

**Testimony on Senate Bill 136 before the Senate Financial Institutions and Insurance
Committee**

Madam Chair and Members of the Committee:

Thank you for this opportunity to present information in support of Senate Bill 136 on behalf of the Kansas Association of Property and Casualty Insurance Companies, our state trade association for domestic property casualty insurance companies in Kansas and also on behalf of PCI, the Property Casualty Insurers Association of America, a national trade association with over 1,000 member insurers in the U.S. and whose member companies write over 40% of the property casualty business in Kansas.

In essence, this bill restricts the type of damages that an injured owner or operator of an uninsured vehicle can recover in Kansas in the event of an automobile accident. The bill does not restrict the amount of actual or pecuniary damages, such as reasonable medical expenses, lost earnings and property damage that can still be sought and recovered by an uninsured owner or operator. Also, there is no restriction on damages that may be sought by passengers (other than the uninsured owner), such as the uninsured motorist's children, in the event they are injured in the accident. This is not a new concept, but rather a legislative remedy to address the uninsured motorist problem found in most states.

Nearly every state has adopted mandatory automobile liability coverage similar to the required coverage in Kansas. And with the adoption of such mandated coverage, other states have also struggled to find a way to assure compliance and reduce the number of uninsured motorists. In fact, the problem has been more pervasive in most other states, while Kansas has generally been ranked among the states with the lowest uninsured motorist population. Looking back ten years ago, the Insurance Research Council, a division of the American Institute for CPCU and the Insurance Institute of America, which are independent, nonprofit educational and research organizations, conducted a national study and estimated that the uninsured motorist population nationwide averaged about 14%, with Kansas estimated to have an average of about 8%, ranking

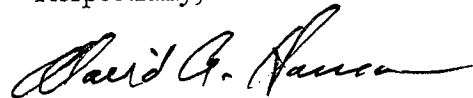
*FI&I Committee
2-15-11
Attachment 3*

in 7th place among the states with the lowest uninsured motorist populations. Since then, the estimates and rankings have changed somewhat and, depending on the estimates used, some would suggest that the percentages of uninsured motorists have been increasing nationally and in most states, including Kansas. Along with the increasing estimates, there have been increased concerns raised about doing something to make uninsured motorists comply with the law.

In response to these growing concerns, the Legislature adopted a resolution four years ago establishing a task force to look into electronic verification of motor vehicle financial security compliance. A number of other states have already tried to use electronic verification and none have reported much success with reducing the number of uninsured motorists, nor with trying to avoid mismatches and erroneous matches. More recently, a web based system for comparing information is being tested in several states, but has not yet been in use long enough, nor on a broad enough scale to recommend in Kansas. We therefore looked for other alternatives to recommend and found that a few states have tried and had some success with the "No Pay - No Play" concept with some variations, such as increased restrictions for repeat offenders. In addition to addressing uninsured motorists, some states have also included similar restrictions on motorists driving under the influence of intoxicating liquor or drugs and similar provisions have been included in subsection (b) of the bill. We believe this is more than a fairness issue, it is a strong message to those who violate the laws of Kansas and put others' lives at risk, that such conduct in Kansas will put them at risk also. Thus, we recommended to the task force that this concept be adopted in Kansas and the task force concluded its work two years ago with a report that recommended passage of this type of legislation, rather than trying to implement electronic verification. Considering the current financial situation, this legislation certainly has the advantage of not requiring any new funding. "No Pay - No Play" is essentially self-policing, and it has the capability of catching those who have managed to avoid detection under our current system.

We would therefore urge your favorable consideration of Senate Bill 136.

Respectfully,



David A. Hanson

Legislative Counsel

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



David Monaghan, GPCU
Government Affairs Counsel

February 15, 2011

Senator Ruth Teichman
Kansas State Capitol
Room 236-E
300 SW 10th Street
Topeka, KS 66612

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

Dear Chairman Teichman and Members of the Senate Financial Institutions and 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".

David Monaghan

*FIP I Committee
2-15-11
Attachment 4*

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

BRAD SMOOT
ATTORNEY AT LAW

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206

STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
AMERICAN INSURANCE ASSOCIATION
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
Regarding 2011 SB 136
February 15, 2011

(Written Only)

Madam Chair 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.

F.I.I. Committee
2-15-11
Attachment 5

TO: THE HONORABLE RUTH TEICHMAN, CHAIR
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

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

RE: S.B. 136

DATE: FEBRUARY 15, 2011

Madam Chair, 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 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 black ink, appearing to read "Will W. Sneed", written in a cursive style.

William W. Sneed

WWS:kjb