

MINUTES OF THE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on March 9, 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:

Others attending:

See attached list.

The Chair called the meeting to order.

Subcommittee report

SB 206 - Surplus Lines Insurance Multi-State Compliance Compact.

Melissa Calderwood, Legislative Research, gave an update on the legislation considered by the Senate Subcommittee on **SB 206** and its recommendations to the full Committee. She said the subcommittee reviewed the requirements created by the Federal Non admitted and Reinsurance Act (NRRA) for the allocation and collection of premium tax for excess and surplus lines and the corresponding legislative models adopted by the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL) in Senate bills 178 and 206, respectively. She said the Subcommittee recommended using **SB 206** as the base bill for amendments. The amendments were requested by the Kansas Insurance Department and would make amendments to current surplus lines and premium tax collection law in the Insurance Code. The requested amendments are similar to those amendments presented in **SB 178**, she said, with one exception. The quarterly reporting required under **SB 178** would be restored to the annual reporting, as allowed in current law. She added that under the amendments adopted by the subcommittee, the effective date of **SB 206** also is updated to publication in the Kansas Register. Finally, she said the Revisor indicated technical amendments to the Compact language would be necessary for review at the time of any action by the full Committee. (Attachment 1)

Senator Longbine served as Chair of the Subcommittee. He gave a brief committee report and said **SB 178** and **SB 206** were extensively studied. He said there were amendments offered by the Insurance Department and it is the committee's opinion that **SB 206** should be adopted as amended.

Ken Wilke, Revisor, reviewed the technical amendments to **SB 206**.

The Chair ended the Subcommittee report.

Hearing on

HB 2119 – Prohibiting accident response service fees

Melissa Calderwood gave an overview of the bill. She said this bill would prohibit a municipality from charging an accident response fee to persons receiving service inside or outside the municipality, except in the case of accidents involving hazardous materials or requiring extraordinary emergency services, in which case only actual costs could be charged. She said the bill would also amend an existing statute requiring motor vehicles owned or leased by Kansas political subdivisions to bear the subdivision's name, by adding exemptions for county or district attorney investigators to the statute's current list of exemptions.

CONTINUATION SHEET

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

Bill Sneed, State Farm Insurance, testified in support of **HB 2119**. Mr. Sneed stated his client believes the Kansas Legislature should review situations encompassed by **HB 2119** to determine the state's public policy on this issue. He said it is not a given that insurance companies are responsible for all emergency response costs. He said 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. He said each claim is investigated individually and is handled on its own merit. (Attachment 2)

Lee Wright, representing Farmers Insurance Group, testified in support of **HB 2119**. He said charging of an 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. He said Farmers Insurance 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, they will be forced to consider the additional claims costs in the customer's auto rates. (Attachment 3)

Brad Smoot, representing American Insurance Association, presented written testimony in support of **HB 2119**. (Attachment 4)

David Monaghan, representing American Family Insurance Group, presented written testimony in support of **HB 2119**. (Attachment 5)

Rick Wilborn, representing Farmers Alliance, presented written testimony in support of **HB 2119**. (Attachment 6)

Larry Mulliken, Fire Chief of Salina, testified in opposition to **HB 2119**. Chief Mulliken testified that the Salina Rescue Service Fee only applies when the fire department performs rescue and incident stabilization operations on vehicles driven by drivers that live outside Saline County. He said county and city residents are not charged the fee since their property and sales tax funds the equipment, personnel and training. He said the premise for the rescue service fee is simple, if you receive services that you did not help establish and pay for upfront, a modest service fee for services rendered seems logical and appropriate to help offset some of the cost. (Attachment 7)

Nathan Eberline, League of Kansas Municipalities, testified in opposition to **HB 2119**. He said this bill eliminates the capacity of cities to fund key city services. He said the bill, as it currently reads, eliminates cities' capacity to charge a fee when an emergency requires specialized rescue or response from law enforcement. In the original version of **HB 2119**, the language of the bill did not include cities. Consequently, he said, there was no opportunity for testimony by the affected government entities. He said the process for sound legislation and deliberation was unfortunately truncated, and partially for that reason, the League opposes the adoption of **HB 2119**. (Attachment 8)

Both the League of Kansas Municipalities and Chief Mullikan noted that eliminating fees as a viable option for specialized rescue service will harm cities and their capacity to serve. Senator Teichman requested the City of Salina and the League of Kansas Municipalities draft an amendment to address this concern.

The Chair closed the hearing on **HB 2119**.

The next meeting is scheduled for March 10, 2011.

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

**SENATE FINANCIAL INSTITUTIONS & INS. COMMITTEE
GUEST LIST**

DATE: 3-9-11

NAME	REPRESENTING
Lee Wright	Farmers Ins.
Rick Wilbur	Farmers Alliance
Nathan Ebenke	LKM
Carey Mulliken	Salina Fire Dept.
Dennis Kriesel	KAC
Lydia Buxter	Federico Consulting
DICK CARTER	CITY OF MANHATTAN
Natalie Haag	Security Benefit
B.H. Sneed	State Farm
Patty Dickinson	
Laura T. Carroll	So. LV County Leadership
Kevin Davis	KID
ERIK SARTORIUS	City of Overland Park
Page Rauthier	Hein Law Firm
Sandy Braden	NAIFA
Justin Holstein	KAPLIC
Kerri Spielman	KATA
Le Roy Brunbard	K-Pra
Jim Newins	KID

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March 9, 2011

To: Senate Committee on Financial Institutions and Insurance

From: Melissa Calderwood, Principal Analyst

Re: Surplus Lines Insurance; Subcommittee on SB 206

This memorandum provides an update on the legislation considered by the Senate Subcommittee on SB 206 and its recommendations to the full Committee. The subcommittee reviewed the requirements created by the federal Nonadmitted and Reinsurance Act (NRRA) for the allocation and collection of premium tax for excess and surplus lines and the corresponding legislative models adopted by the National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Legislators (NCOIL) in Senate bills 178 and 206, respectively. A summary of the subcommittee review of the legislation also is discussed.

Background

Surplus/Excess/Specialty Lines of Coverage

Surplus lines (often referred to as excess lines or specialty lines) insurance also is known as non-admitted insurance. This form of insurance is intended to provide coverage that cannot be procured easily in the conventional insurance marketplace. A definition for non-admitted insurance will be provided later in this memorandum. Surplus lines coverage is a block of business that is separate from the more traditional insurance coverages available, such as homeowners, auto, life and health.

Licensing requirements. Under Kansas law (KSA 2010 Supp. 40-246b) an excess coverage license is obtained to "negotiate the types of contracts of fire insurance enumerated in KSA 40-901, and amendments thereto, and the type of casualty insurance contracts enumerated in KSA 40-1102, and amendments thereto, or reinsurance, or to place risks, or to effect insurance or reinsurance for persons or corporations other than such agent, with insurers not authorized to do business in this state." Licensees are required to file an annual statement by March 1, accounting for all gross premiums upon policies written on risks (located in Kansas) [KSA 2010 Supp. 40-246c].

The Kansas Insurance Department publishes a list of excess lines companies, as well as syndicates (Lloyd's of London) at: <http://www.ksinsurance.org/industry/agent/excesslines.htm>.

*FI & I Committee
3-9-11
Attachment 1*

Nonadmitted and Reinsurance Reform Act of 2010 – July 21, 2011 Effective Date

Congress enacted the NRRRA in the 2010 federal financial services reform bill, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (PL 111-203). The measure was signed into law by the President on July 21, 2010. The NRRRA provisions become effective upon the expiration of the 12-month period beginning on the date of enactment – July 21, 2011. [Section 513] A copy of the NRRRA provisions in the Dodd-Frank Act is attached (Attachment 1).

Definitions. Following are selected definitions associated with the Nonadmitted and Reinsurance Reform Act of 2010:

- *Home State.* Under the NRRRA, a “home State” is defined to mean, 1) the State in which an insured maintains its principal place of business, or in the case of an individual, the individual's principal residence; or 2) if 100 percent of the insured risk is located out of the State referred to [in (1)], the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated. [Section 527 (6)]
- *Nonadmitted insurance.* Under the Act, “nonadmitted insurance” is defined to mean “any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.” [(9)]
- *Nonadmitted insurer.* The term “nonadmitted insurer” is defined to mean, “with respect to a State, an insurer, not licensed to engage in the business of insurance in such State; but does not include a risk retention group....” [RRGs as defined in the Liability Risk Retention Act of 1986 (11)]
- *Surplus lines broker.* “Surplus lines broker” is defined to mean “an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers. [(15)]

Provisions of the Act

Among the relevant provisions of the NRRRA:

- **Compliance, Home-State**
 - *Home State's exclusive authority* – only an insured's “home State” is permitted to require a premium tax payment for nonadmitted insurance. [Section 521(a)]
 - *Regulatory authority* – grants exclusive authority for the regulation of surplus line transactions/placements of nonadmitted insurance. [522(a),(b)]
 - *Broker licensing* – only the insured's home State may require a surplus lines broker to be licensed in order to sell or solicit nonadmitted insurance. [522(b)]
 - *Exemptions* – Home State provisions do not apply to workers compensation or excess insurance for self-funded workers compensation plans with a nonadmitted insurer. [522(d)]

- Uniform Standards for Insurers
 - *Nationwide system, Statement of Intent* – states the intent of Congress that each state adopt uniform standards for the collection and allocation of premium taxes. Specifies that this adoption can be accomplished by an interstate compact. [521(b)(4)]
 - *Surplus Lines Eligibility (foreign)* – provides that states cannot impose certain eligibility requirements or establish eligibility criteria for a U.S. domiciled surplus lines insurer, except to comply, by amendment to state law, with two provisions of the National Association of Insurance Commissioners (NAIC) Nonadmitted Model Act: (1) maintain capital and surplus of at least \$15 million (or minimum requirement of the insured's home state, if higher) and (2) be “authorized to write in its domiciliary jurisdiction.”
 - *Surplus Lines Eligibility (alien)* – creates a provision for insurers outside the U.S. (“alien”), allowing that any insurer listed on the NAIC/IID (International Insurers Department of the NAIC) is eligible [could not be prohibited by a state – Section 524].
- Legislative Response
 - *Implementation of tax allocation system* – prescribes time lines that require a response from state legislatures, including a provision that if states fail to implement a tax allocation within 330 days after the adoption of this act, then a single state taxation system will become effective on July 21, 2011. The home State could retain 100 percent of the tax on gross premium – if it has amended its own laws. [521(A),(B)]
- National Producer Database
 - *Participation in a uniform national database* – requires states to participate in a national producer database of either the NAIC or an equivalent uniform national database for the licensure and renewal of surplus lines brokers by July 1, 2012. Failure to participate would preclude a state from collecting licensing fees for surplus lines brokers. [523]

Legislative Models

The NRRA authorizes states to enter into a compact or otherwise establish procedures for the collection and allocation of nonadmitted insurance premium taxes. In the months following the enactment of these provisions, two proposals have advanced: the National Association of Insurance Commissioners' Non-Admitted Insurance Multi-State Agreement (NIMA) and the National Conference of Insurance Legislators' (NCOIL) Surplus Lines Insurance Multi-State Compliance Compact (known as SLIMPACT-Lite). To date, two bills in Kansas have been introduced to address this issue – **SB 178**, the Nonadmitted Insurance Act and **SB 206**, the Surplus Lines Insurance Multi-State Compliance Compact. A comparison chart of the proposals, from the NCOIL perspective is attached ([Attachment 2](#)).

2010 SB 178

SB 178 was requested as a Committee bill by the Kansas Insurance Department. The bill would authorize the Insurance Commissioner to enter into agreements with other states as necessary to carry out the purposes of the Act. Among the enumerated purposes of the Act, is the compliance with the Nonadmitted and Reinsurance Reform Act of 2010 and the promotion of nationwide uniform reporting requirements, forms and procedures that facilitate the reporting,

payment, collection, and allocation of premium taxes for nonadmitted insurance for multi-state risks. The bill would define the term "principal place of business" for the purpose of determining the home state of the insured. Among the amendments to current law, the Commissioner would be permitted to issue an excess lines coverage license to any licensed property and casualty agent (Kansas or any other state) and those agents would be allowed to negotiate for insureds whose home state is Kansas. The bill also would amend the collection method and allocation of premium taxes in current law (KSA 40-246c). The bill further would provide that in instances where a state failed to enter into a compact or reciprocal allocation procedure, the net premium tax collected would be retained by the state (Kansas).

2010 SB 206

SB 206 would enact the Surplus Lines Insurance Multi-State Compliance Compact. Among the stated purposes of the Compact is to implement the express provisions of the NRRA. A Compact commission, the Surplus Lines Insurance Multi-State Compliance Compact Commission, would be created by the states participating in the Compact. The bill also provides for exclusive home state regulation of surplus lines compliance. The Commission would be given the authority to adopt mandatory rules which establish Home State authority, allocation formulas, clearinghouse transaction data, a clearinghouse for the receipt and distribution of allocated premium tax and transaction data, and uniform rulemaking procedures for the purpose of operating and administering the Compact, its bylaws, and its rules [Article III]. Further, the bill details the organization and powers of the Executive Committee. Finally, the Insurance Commissioner would represent the State on the Compact.

The organization established for the Compact Commission and the Executive Committee is similar to prior legislation, 2005 SB 268, that allowed Kansas to join the Interstate Insurance Product Regulation Compact.

Fiscal Note on SB 206 (as introduced)

A fiscal note for SB 206 has been published by the Division of the Budget (Attachment 2). The fiscal note indicates that the Insurance Department currently collects revenue from the 6.0 percent tax on surplus lines premiums. Taxes are required to be submitted by March 1 of each year. The revenue from this tax, the fiscal note continues, is deposited in the State General Fund. Passage of the bill would have the potential to protect the State General Fund from revenue loss. Kansas currently collects approximately \$10.0 million in surplus lines premium taxes each year. The Insurance Department estimated that as much as \$2.0 million of this revenue could be lost to the State if a bill is not passed to comply with the Dodd-Frank Wall Street Reform Act. [This fiscal note also would be applicable to SB 178]

Activities in Other States

State legislatures have begun consideration of legislation to comply with the NRRA. Bills introduced have included provisions associated with the NIMA or SLIMPACT-Lite models as well as a "third option." Proposed legislation in Mississippi (HB 785), for example, does not endorse either NIMA or SLIMPACT, but instead generally authorizes the Insurance Commissioner to enter into an agreement, compact or other procedures for the purposes of the allocation of premium tax. To date, South Dakota has passed legislation (HB 1030) which allows for the Director to enter into an agreement (some similarities with NIMA). The measure was signed by the Governor on February 17th. A SLIMPACT-Lite bill in Kentucky (HB 167, substitute) has been approved by the House and Senate and was delivered to the Governor on March 4th. In North Dakota, HB 1123, which authorizes the Commissioner to participate in a

premium tax allocation compact or agreement, has passed the House and is in Senate Committee. A number of states have had action by the first committee, but has not yet had floor debate on the legislative proposals. A cursory review of state legislative proposals (using reporting by both the National Conference of State Legislatures and the National Association of Professional Surplus Lines Offices, Ltd. [NAPSLO]) indicates that some eleven states have introduced a NIMA or NIMA-type legislation. Eleven states also have introduced the SLIMPACT-Lite legislation. Additionally, nine states have language that permits the "third option" (either entering into an agreement or a compact). Finally, seven states have language that allows for compliance with the NRRRA (namely for tax collection purposes). A number of states, like Kansas, are considering more than one legislative model or approach to compliance with the NRRRA provisions.

SB 206 – Subcommittee Review

The Subcommittee received testimony from proponents supporting SB 206 and SB 178. Proponents of SB 206 included Senator Teichman and representatives of the Kansas Association of Insurance Agents and NAPSLO. Information from the Council of State Governments (a legal review of NIMA) also was distributed. A memorandum on the NRRRA and legislative proposals also was provided by Committee staff.

Proponents of SB 206 indicated, among other things, that an agreement rather than a formal compact might not be as stable in the future. Concerns were raised with NIMA serving as a memorandum of understanding among state insurance regulators versus the SLIMPACT-Lite model requiring state legislative adoption. Representatives of the Insurance Department provided information about the regulation and taxation of surplus lines in Kansas, the NRRRA requirements, and summaries of the two bills. The Department generally spoke to the NIMA legislation and made available information on the work of the NAIC Surplus Lines Implementation Task Force and its efforts to craft a "nationwide solution." All parties to the bill discussed the timing for legislation to be adopted as required under the NRRRA and the potential loss to the State of premium tax revenues, if Kansas does not enter into an agreement or compact with other states.

The Subcommittee recommended using SB 206 as the base bill for amendments. The amendments were requested by the Kansas Insurance Department and would make amendments to current surplus lines and premium tax collection law in the Insurance Code. The requested amendments are similar to those amendments presented in SB 178, with one exception: the quarterly reporting required under SB 178 would be restored to the annual reporting, as allowed in current law. Under the amendments adopted by the subcommittee, the effective date of SB 206 also is updated to publication in the *Kansas Register*. Finally, the Revisor indicated technical amendments to the Compact language would be necessary for review at the time of any action by the full Committee.

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“Sec. 315. Continuing in office.”.

Subtitle B—State-Based Insurance Reform

Nonadmitted and
Reinsurance
Reform Act
of 2010.
15 USC 8201
note.

SEC. 511. SHORT TITLE.

This subtitle may be cited as the “Nonadmitted and Reinsurance Reform Act of 2010”.

SEC. 512. EFFECTIVE DATE.

15 USC 8201
note.

Except as otherwise specifically provided in this subtitle, this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle.

PART I—NONADMITTED INSURANCE

SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

15 USC 8201.

(a) HOME STATE’S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured’s home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

Applicability.

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this subtitle, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured’s home State may require surplus lines brokers and insureds who

have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

15 USC 8202.

SEC. 522. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) **HOME STATE AUTHORITY.**—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) **BROKER LICENSING.**—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) **ENFORCEMENT PROVISION.**—With respect to section 521 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) **WORKERS' COMPENSATION EXCEPTION.**—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

15 USC 8203.

Time period.

SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this subtitle, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

15 USC 8204.

SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 521(b) of this subtitle that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS. 15 USC 8205.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

Written request.

SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this part on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) **CONTENTS.**—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this subtitle;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) **CONSULTATION WITH NAIC.**—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) **REPORT.**—The Comptroller General shall complete the study under this section and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the findings of the study not later than 30 months after the effective date of this subtitle.

SEC. 527. DEFINITIONS.

15 USC 8206.

For purposes of this part, the following definitions shall apply:

(1) ADMITTED INSURER.—The term “admitted insurer” means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) AFFILIATE.—The term “affiliate” means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) AFFILIATED GROUP.—The term “affiliated group” means any group of entities that are all affiliated.

(4) CONTROL.—An entity has “control” over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of \$20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of \$50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

Effective dates.

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) **AFFILIATED GROUPS.**—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) **INDEPENDENTLY PROCURED INSURANCE.**—The term “independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer.

(8) **NAIC.**—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(9) **NONADMITTED INSURANCE.**—The term “nonadmitted insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) **NON-ADMITTED INSURANCE MODEL ACT.**—The term “Non-Admitted Insurance Model Act” means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) **NONADMITTED INSURER.**—The term “nonadmitted insurer”—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

(12) **PREMIUM TAX.**—The term “premium tax” means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(13) **QUALIFIED RISK MANAGER.**—The term “qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any

other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as “CPCU”) issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(14) REINSURANCE.—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(15) SURPLUS LINES BROKER.—The term “surplus lines broker” means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(16) STATE.—The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

PART II—REINSURANCE**SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.** 15 USC 8221.

(a) **CREDIT FOR REINSURANCE.**—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) **ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.**—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this part; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 532. REGULATION OF REINSURER SOLVENCY.

15 USC 8222.

(a) **DOMICILIARY STATE REGULATION.**—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) **NONDOMICILIARY STATES.**—

(1) **LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.**—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) **RECEIPT OF INFORMATION.**—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 533. DEFINITIONS.

15 USC 8223.

For purposes of this part, the following definitions shall apply:

(1) **CEDING INSURER.**—The term “ceding insurer” means an insurer that purchases reinsurance.

(2) **DOMICILIARY STATE.**—The terms “State of domicile” and “domiciliary State” mean, with respect to an insurer or

reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) NAIC.—The term “NAIC” means the National Association of Insurance Commissioners or any successor entity.

(4) REINSURANCE.—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(5) REINSURER.—

(A) IN GENERAL.—The term “reinsurer” means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(6) STATE.—The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

PART III—RULE OF CONSTRUCTION

15 USC 8231.

SEC. 541. RULE OF CONSTRUCTION.

Nothing in this subtitle or the amendments made by this subtitle shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this subtitle and any amendments to this subtitle and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

15 USC 8232.

SEC. 542. SEVERABILITY.

If any section or subsection of this subtitle, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this subtitle, and the application of the provision to any other person or circumstance, shall not be affected.

Bank and
Savings
Association
Holding
Company and
Depository
Institution
Regulatory
Improvements
Act of 2010.
12 USC 1811
note.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK AND SAVINGS ASSOCIATION HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

SEC. 601. SHORT TITLE.

This title may be cited as the “Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010”.

12 USC 1815
note.

SEC. 602. DEFINITION.

For purposes of this title, a company is a “commercial firm” if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined

A Comparison of Key Provisions Which Differentiate SLIMPACT-LITE from the NIMA Proposal

SLIMPACT-LITE	NIMA
1. Is an interstate compact.	Is a proposed contract not a compact among states. It is intended that state legislatures will authorize states to adopt the agreement.
2. SLIMPACT-Lite was drafted by 60+ industry representatives, brokers, trade associations with input from regulators and legislators. The Compact was drafted over an 18 month period.	The drafting of this proposal began in the Fall of 2010 by an NAIC working group of 12, comprised mostly of Insurance Department staff and is an ongoing process.
3. Is endorsed by NCOIL, CSG and numerous insurance trade associations.	
4. SLIMPACT-lite includes authority to set national insurer solvency/eligibility standards. The NRRA prohibits state specific eligibility standards. The NRRA authorizes the adoption of national uniform eligibility standards but only if they are part of a tax allocation compact/agreement.	NIMA has no similar provisions. States will therefore have no practical authority to impose solvency oversight on insurers writing surplus lines business.
5. SLIMPACT-Lite has a structure to create a clearinghouse and equal voting rights for each state that adopts it.	NIMA includes a provision to create a clearinghouse entity and a plan of operations agreed upon by a majority of participating states.

6. Ten states or states which process more than 40% of all surplus lines transactions must enact the Compact before it can create a clearinghouse and adopt uniform rules.	Two states can agree by contract and establish the clearinghouse and plan of operations.
7. SLIMPACT-Lite is intended to minimize the cost time, effort, and manpower brokers must devote to data collection, tax reporting, allocation and payment.	NIMA is very rigid in that 1) tax allocation formulas are incorporated in the agreement and 2) requires unanimous consent for most decisions. It is also cumbersome in the volume of data elements it will require brokers to report.
8. Each state will be permitted to establish one single rate of taxation to apply to non admitted insurance transactions.	Current draft of NIMA appears substantially similar to SLIMPACT-Lite in this regard.
9. Each state must limit tax collection to no more than four specific dates a year. States have the option of annual, semiannual or quarterly tax collection.	NIMA requires all states to convert to quarterly tax returns.
10. SLIMPACT-Lite's structure includes a Commission whose members are chosen by the States, an Executive Committee as a governing board, and an Operations Committee to report to the Executive Committee and provide technical expertise and guidance. It is patterned after the IIPRC.	At present, NIMA has no governing structure in place to respond to inquiries and guide the mechanism.

TO: The Honorable Ruth Teichman, Chair
Senate Financial Institutions and Insurance Committee

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

SUBJECT: H.B. 2119

DATE: March 9, 2011

Madame Chair, 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

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FI&I Committee
3-9-11
Attachment 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.

- **House Action.**

The House Committee, concerned that the definition of emergency service was not distinct enough, made changes found on page 2, lines 34-38, and then specified what costs were covered on page 2, lines 39 through page 3, lines 1-4. While we have no objection to that, we have attached a balloon that states what service is covered and what costs are paid. Attached is a proposed balloon that takes care of that.

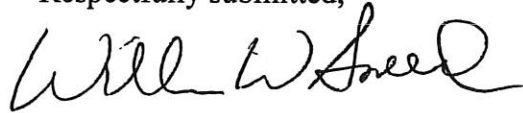
Also, the bill passed the House 119-2.

The Honorable Ruth Teichman, Chair
Senate Financial Institutions and Insurance Committee
March 9, 2011
Page 3

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.

I am available for questions at your convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Will W. Sneed", written in a cursive style.

William W. Sneed

WWS:kjb

HOUSE BILL No. 2119

By Committee on Local Government

1-27

AN ACT concerning ~~emergency medical services; relating to [political subdivisions; relating to]~~ accident response service fees; ~~amending K.S.A. 80-1557 and repealing the existing section[; relating to marking of vehicles; amending K.S.A. 8-305 and repealing the existing section].~~

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

Section 1. ~~K.S.A. 80-1557 is hereby amended to read as follows: 80-1557. (a) As used in this section:~~

(1) ~~"Rescue service" means a service which provides emergency care by qualified personnel through a township or fire district fire department.~~

(2) ~~"Emergency care" means the services provided after the onset of a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to: (A) Place the patient's health in serious jeopardy; (B) seriously impair bodily functions; or (C) result in serious dysfunction of any bodily organ or part.~~

(3) ~~"Qualified personnel" means any individual who holds a certificate as an attendant as defined in K.S.A. 65-6112, and amendments thereto.~~

(4) ~~"Township" means any township which has established a fire department pursuant to K.S.A. 80-1901 et seq., and amendments thereto.~~

(5) ~~"Fire district" means any fire district which has established a fire department pursuant to K.S.A. 80-1540 et seq., and amendments thereto.~~

(b) ~~The township board or governing body of the fire district may authorize the township or fire district fire department to provide rescue service as a township or fire district function, within or without the township or fire district, or may contract with any person or~~

1 governmental entity for the furnishing of rescue service and upon such
 2 terms and conditions, and for such compensation as may be agreed
 3 upon which shall be payable from the township general fund or the fire
 4 fund or the fire district fund.

5 (e) ~~The township board or governing body of the fire district may~~
 6 ~~establish charges to persons receiving rescue service inside or outside~~
 7 ~~of such township or fire district. Rescue service shall not include an~~
 8 ~~accident response service fee. As used in this subsection, the term~~
 9 ~~"accident response service fee" means any fee imposed on the driver or~~
 10 ~~owner of a motor vehicle, an insurance company or any other person,~~
 11 ~~for the response to or investigation of a motor vehicle accident, but~~
 12 ~~does not include the usual and customary charges for providing~~
 13 ~~ambulance and emergency services when immediate action is required~~
 14 ~~to save life, prevent suffering or disability or to protect and save~~
 15 ~~property. The charges so made and received shall be deposited in the~~
 16 ~~general funds of the township or fire district, and the same may be used~~
 17 ~~in addition to funds received under the tax levies authorized by K.S.A.~~
 18 ~~80-1546 and 80-1903, and amendments thereto.~~

19 (d) ~~Qualified personnel providing rescue service shall be~~
 20 ~~compensated in the same manner as other fire department employees~~
 21 ~~and volunteers as provided by K.S.A. 80-1544 and 80-1904, and~~
 22 ~~amendments thereto.~~

23 ~~Sec. 2. K.S.A. 80-1557 is hereby repealed.~~

24 [New] Section 1. (a) As used in this section:

25 (1) "Municipality" means a city, county, township, fire district
 26 or any other political and taxing subdivisions in this state.

27 (2) "Accident response service fee" means any fee imposed on
 28 the driver or owner of a motor vehicle, an insurance company or
 29 any other person, for the response to or investigation of a motor
 30 vehicle accident, but does not include the usual and customary
 31 charges for providing ambulance and emergency services when
 32 immediate action is required to save life, prevent suffering or
 33 disability or to protect and save property.

34 (3) "Emergency services" includes the ~~police~~, fire and
 35 emergency medical service personnel and equipment deemed
 36 appropriate by the municipality to address reasonably anticipated
 37 needs including, but not limited to, unknown number of injured
 38 persons and possible environmental and health threats.

39 (b) No municipality shall charge an accident response fee to

actual costs of

involving hazardous material.

1 persons receiving emergency services inside or outside of such
2 municipality, except for actual costs of a motor vehicle accident
3 ~~involving hazardous materials or requiring extraordinary~~
4 ~~emergency services.~~

5 [Sec. 2. K.S.A. 8-305 is hereby amended to read as follows: 8-
6 305. All motor vehicles owned or leased by any political subdivision
7 of the state of Kansas shall bear the name of the political
8 subdivision owning or leasing such vehicle plainly printed on both
9 sides thereof. This act shall not apply to the following:

10 (a) Municipal fire apparatus, police patrols and ambulances;
11 (b) passenger vehicles used by plain clothes police officers,
12 *county or district attorney investigators* or community corrections
13 personnel working in the employ of any political subdivision; and
14 (c) motor vehicles owned or leased by any municipal
15 university.]

16 [Sec. 3. K.S.A. 8-305 is hereby repealed.]

17 Sec. ~~3-2~~ [4.] This act shall take effect and be in force from and
18 after its publication in the statute book.
19



FARMERS

March 9, 2011

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

From: Lee Wright, Senior Governmental Affairs Representative

Re: Testimony on House Bill 2119

Position: Support

Chairman Teichman and members of the Committee, my name is Lee Wright and I am representing Farmers Insurance. 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 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.

It should be emphasized 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 Claims Dept. that Farmers is currently paying crash tax fees charged to our policyholders. 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 customer's auto rates.

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

*FI&I Committee
3-9-11
Attachment 3*

BRAD SMOOT
ATTORNEY AT LAW

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10200 STATE LEA WOOD ROAD
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LEAWOOD, KANSAS 66206

STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
AMERICAN INSURANCE ASSOCIATION
SENATE FINANCIAL INSTITUTIONS AND INSURANCE
Regarding 2011 HOUSE BILL 2119
MARCH 9, 2011

(WRITTEN TESTIMONY ONLY)

Dear 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 appear today in support of House Bill 2119.

AIA supports a statewide ban on emergency response fees imposed on auto crash victims as a revenue generator for local governments. Such fees are unrelated to the actual and legitimate costs of responding to accidents, the costs of which have long been paid by auto insurers and motorists. Accident response is a public service that equally benefits all Kansans. Charging extra for baseline municipal services amounts to double taxation. It sends the wrong message to motorists in need of emergency assistance.

It is important to note that while some insurance policies may cover the costs of these fees, others will not, leaving the motorist with the unanticipated charge for the response fee. Either way, the insured motorist ends up paying the fee directly or in the form of increased premiums.

Only a couple of Kansas cities have attempted to impose this new fee. On the other hand, twelve states have already implemented statewide bans or limits on response fees and others are currently considering doing the same. Passage of a statewide ban on these unpopular "crash taxes" sends the right message to Kansas motorists. We urge the Committee to favorably consider House Bill 2119. Thank you.

FI&I Committee
3-9-11
Attachment 4



David Monaghan, CPCU
Government Affairs Counsel

WRITTEN TESTIMONY ONLY

March 9, 2011

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

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

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 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,

A handwritten signature in black ink, appearing to read "David A. Monaghan", written in a cursive style.

David Monaghan

*FI&I Committee
3-9-11
Attachment 5*

FarmersAlliance

Insuring Rural America Since 1888

To: Senate Financial Institutions and Insurance Committee

From: Richard E. Wilborn

Re: House Bill No. 2119

Date: March 9, 2011

Madam Chairperson and Members of the Committee, I appreciate this opportunity to encourage your support of H.B. 2119, which limits local governments from imposing accident response fees.

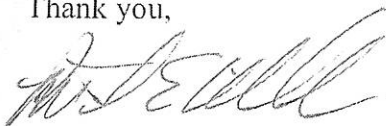
My name is Rick Wilborn. I represent the Farmers Alliance Mutual Insurance Companies. Farmers Alliance is a Kansas domestic property and casualty company that has been operating in and committed to the State of Kansas since 1888. We also provide property and casualty insurance in eight other states.

Accident response fees are a double taxation. They are rarely covered by insurance since they are not considered property damage or medical bills. These fees are a waste and most cities are not collecting as much as they thought after deducting the fees they pay to vendors, waiving the fees charged to angry citizens, etc.

H.B. 2119 is a carefully drafted and balanced solution. The legislative committee that approved H.B. 2119 listened closely to the valid concerns of local government and drafted the bill so that it does not interfere with proper fees for services; such as, ambulances for those needing them and for toxic waste cleanup.

I respectfully urge your support of H.B. 2119.

Thank you,



Rick E. Wilborn, CPCU

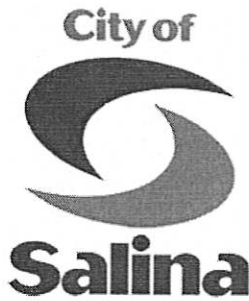
1122 N. Main, P.O. Box 1401 • McPherson, KS 67460
620.241.2200 • fax 620.241.5482 • www.fami.com

Farmers Alliance Mutual Insurance Company
Alliance Indemnity Company • Alliance Insurance Company, Inc.

F.I.I. Committee

3-9-11

Attachment 6



**SALINA FIRE DEPARTMENT
OFFICE OF THE FIRE CHIEF**

**Written Testimony of Fire Chief Larry Mullikin
Regarding Pending Legislation on
Accident Response Fees
March 9, 2011**

I want thank you for giving me the opportunity and time to address the issue of rescue service and response fees before this sub-committee.

I am, Larry Mullikin, Fire Chief of the City of Salina. I have over 42 years of experience in the fire service and received advanced training at the National Fire Academy, at Emmitsburg, Md., and served twenty six years on the Wichita Fire Department and retiring after serving as a battalion chief for ten years. Subsequently, I was the Fire Chief at Ponca City, Oklahoma, and Stillwater, Oklahoma for 3.5 years and 8 years, respectively. In 2007, I was appointed the Fire Chief of Salina, Kansas.

First, I would like to clarify what we are talking about. Rescue service fees and rescue response fees are to totally different things.

On NBC Nightly News, with Brian Williams, a story was run nationally that compared the rescue service fee in Salina, Kansas, against a response fee in Chicago Heights, Ill. The Chicago Heights response fee applied to every call they received on the interstate highway system. I find that adding some type of fee for simply responding or traveling to a 911 call distasteful. Reason being, no actual services were rendered to the parties involved.

The Salina Fire Service Rescue Fee only applies when the fire department performs rescue operations on vehicles driven by drivers that live outside Saline County. The premise for the rescue service fee is simple: If you receive services that you did not help establish and pay for upfront, a modest service fee for services rendered seems logical and appropriate.

Today, the Salina Fire Department responds to 56 miles of interstate highway; most of which is outside the city limits and the jurisdiction of the Salina Fire Department. When City Commissioners and citizens first hear this their first response is, "Why?"

The honest answer is we have always done that since the fire department has the equipment to safely extricate and rescue people trapped in motor vehicle accidents inside

*FIJ Committee
3-9-11
Attachment 7*

the municipalities. The burden, both financially and logistically, for vehicle rescues has always fallen on the local fire departments and municipalities. Make no mistake though, the costs of providing rescue services is accelerating at a rapid pace. Is it fair and justifiable for people who receive a service not to help pay for that service?

You may not be aware of the fact that there are eleven different alternative fuel options under development for deployment on our nation's highways. Think for a minute, about the training and cost to local municipalities in equipment and training. More to the point, the reason more people are surviving high-speed automobile accidents (MVA's) is the evolution of engineered steel components found in today's modern vehicle. Boron steel and other advance steel construction components can require up to 250,000 psi from rescue tools. The old tools of the past will not function in the modern world.

The modern day rescue tools are extremely expensive. For example in 2009, the Salina Fire Department deployed a new rescue truck. The truck is equipped with state-of-the-art rescue capabilities. The truck cost approximately \$480,000, not including the hydraulic rescue tools. The basic compliment of rescue tools cost \$70,000 and the Salina Fire Department spends in excess of \$25,000 in maintenance; and that does not include replacements.

The rescue service fee established by the Salina City Commission requires that when rescue services are rendered to the driver of a vehicle that does not reside or own property in Saline County they are charged a flat fee of \$375. It is important to note, that this charge is a fraction of the actual cost of maintaining a modern fire department operation. If the cost of service was determined by the number of responses divided into the general operating budget and capital, the actual cost of responding a fire truck approaches \$1,900.

What Salina's Fire Service Rescue Fee actually does is help offset some of the cost of providing rescue services while also demonstrating to the citizens that they are not shouldering all of the costs. In fact, the City of Salina will allow anyone owing a rescue service fee to pay what they can afford on a monthly basis.

Since 2008 the problems and complaints from the Fire Service Rescue Fee have been few. Normally, when we explain the purpose of the fee people generally understand. Are they happy to pay it? Generally, no – but some are. Most insurance companies cover the cost of the service.

If I have seen any "push back" on the Fire Service Rescue Fee it is from the insurance companies that do not want to step up and help their insured cover the cost. Regardless of the number of vehicles involved in a motor vehicle accident, someone will be determined to be at fault and will be held responsible for all of the costs associated with the accident. The fire department does not care who is at fault, it only charges for services rendered. The legal system or insurance companies will determine the apportionment of responsibility for costs.

One lady, who was very upset at the time because the incident was a single vehicle accident involving her daughter, stopped in mid-sentence and said, "You know my insurance agent told me if I would have had comprehensive coverage they would have paid for it without question." Isn't that the risk she assumed when she chose not to buy

comprehensive coverage, whether it was fire, hail, or a rescue service fee? She actually thought the State of Kansas and the Federal government provided funding for rescue services on highways.

If I leave you with anything today, it is an understanding that response and service fees are two different subjects. Do not take the ability of local jurisdictions to recover costs associated with any service that people depend on at critical moments in their life; because if we do, the services may not be there when needed.

Lastly, I have included a copy of the spreadsheet maintained in Finance that shows all the service fees imposed over the past three years. I have blanked the names out for privacy purposes. On the right hand side of the spreadsheet is an example of a person making payments of various amounts on the rescue service fee, that person's name is not disclosed, also for privacy.

I will answer any questions you may have.

Rescue Service Fees Spreadsheet

Accident Date	Name	Invoice #	Payment Total	Receipt #	Paid By
5/29/2008		2881	\$ 350.00	101523	American Family
7/11/2008		2950	\$ 350.00	102558	Farm Bureau
7/24/2008		2968	\$ 350.00	102528	State Farm
6/13/2008		2915	\$ 350.00	102614	State Farm
9/24/2008		3058	\$ 350.00	104115	American Family
6/12/2008		2906	\$ 350.00	102697	State Farm
7/30/2008		2958	\$ 35.00		
8/30/2008		3010	\$ -		
9/10/2008		3056	\$ 350.00	104613	American Family
9/16/2008		3057	\$ -		
12/2/2008		3160	\$ 367.50	115531	Seloff
12/6/2008		3161	\$ 149.00		Seloff
12/16/2008		3173	\$ -		
1/23/2009		3215	\$ 367.50	109012	private
2/15/2009		3251	\$ 367.50	106445	Travelers
2/16/2009		3252	\$ 367.50	105864	Farmers Ins.
2/24/2009		3279	\$ 367.50		
3/23/2009		3311	\$ -		
3/23/2009		3308	\$ 367.50	110310	National Interstate
3/23/2009		3310	\$ 367.50		Salina Retailer
3/23/2009		3309	\$ 367.50	108085	Northland
3/28/2009		3318	\$ -		
4/16/2009		3354	\$ 367.50	107057	State Farm
4/17/2009		3355	\$ -		
4/17/2009		3353	\$ -		
4/24/2009		3356	\$ -		
5/3/2009		3390	\$ 367.50	107624	David Smith
5/15/2009		3389	\$ -		
5/18/2009		3798	\$ -		
5/20/2009		3395	\$ 367.50	107924	Western Ag.
5/22/2009		3409	\$ 367.50	108210	State Farm
5/22/2009		3408	\$ -		
5/22/2009		3410	\$ 367.50	multiple	private
6/1/2009		3406	\$ 367.50	108010	State Farm
6/3/2009		3426	\$ -		
6/20/2009		3466	\$ 367.50	109156	Dairyland
7/1/2009		3482	\$ 50.00		private
7/2/2009		3483	\$ 367.50		private
7/5/2009		3481	\$ -		
7/12/2009		3490	\$ 367.50	111149	State Farm
7/17/2009		3491	\$ 367.50	110186	Allstate
7/31/2009		3534	\$ 367.50	111234	Farm Bureau
8/9/2009		3543	\$ 367.50	109109	American Family
8/9/2009		3544	\$ -		
8/25/2009		3554	\$ 302.00	115852	Seloff
9/11/2009		3585	\$ -		
9/27/2009		3594	\$ 367.50	109912	Progressive
10/24/2009		3639	\$ 367.50	112292	Seloff
10/26/2009		3640	\$ -		
11/14/2009		3672	\$ 375.00	111745	private
11/16/2009		3673	\$ -		
11/25/2009		3685	\$ 375.00	112067	Farmers Ins.
12/8/2009		3708	\$ 375.00	111900	private
2/20/2010		3785	\$ 375.00	113716	Farm Bureau
2/20/2010		3784	\$ 375.00	113668	American Family
3/4/2010		3799	\$ 375.00	113019	Work Comp
3/10/2010		3826	\$ 375.00	113905	Farmers Alliance
5/7/2010		3894	\$ -		
5/21/2010		3907	\$ -		
5/27/2010		3949	\$ 375.00	115393	private
7/6/2010		3950	\$ 375.00	115674	American Family
7/6/2010		3951	\$ 375.00	116979	American Family
7/8/2010		3972	\$ -		
7/10/2010		3973	\$ 375.00	116686	Metlife Auto & Home
8/7/2010		4002	\$ -		
9/4/2010		4016	\$ -		
9/12/2010		4032	\$ 375.00	115891	Allstate
1/4/2011		4143	\$ -		

	Payment Date	Amount	Balance
Undisclosed			\$ 367.50
Payee	10/2/2009	\$20.00	\$ 347.50
	12/18/2009	\$20.00	\$ 327.50
	1/7/2010	\$30.00	\$ 297.50
	2/1/2010	\$20.00	\$ 277.50
	2/2/2010	\$30.00	\$ 247.50
	3/3/2010	\$20.00	\$ 227.50
	4/2/2010	\$20.00	\$ 207.50
	5/4/2010	\$20.00	\$ 187.50
	6/2/2010	\$20.00	\$ 167.50
	7/1/2010	\$20.00	\$ 147.50
	8/4/2010	\$20.00	\$ 127.50
	9/10/2010	\$20.00	\$ 107.50
	10/12/2010	\$20.00	\$ 87.50
	11/10/2010	\$20.00	\$ 67.50



To: Senate Committee on Financial Institutions and Insurance

From: Nathan Eberline – League of Kansas Municipalities

Date: March 9, 2011

Re: Opposition to House Bill 2119 Regarding Prohibition on Accident Response Service Fees

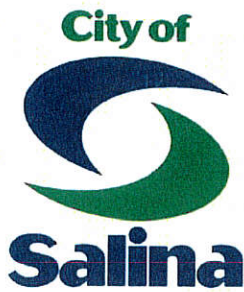
Thank you for the opportunity to offer testimony regarding House Bill 2119. The bill, as it currently reads, eliminates cities' capacity to charge a fee when an emergency requires specialized rescue or response from law enforcement. In the original version of HB 2119, the language of the bill did not include cities. Consequently, there was no opportunity for testimony by the affected government entities. The process for sound legislation and deliberation was unfortunately truncated, and partially for that reason, the League opposes the adoption of HB 2119.

More importantly, the League maintains that this bill eliminates the capacity of cities to fund key city services. To our knowledge, the City of Salina is the only community currently incorporating rescue service fees, and the League supports its effort to resourcefully approach an expensive but critical city service. As the expectations for specialized city services increase and as the cost of services grows more expensive, cities must determine the most effective way to provide those services. Each level of government is struggling to fund services, which has led to a greater reliance on fees. By eliminating the service fee, the burden to pay for these specialized services shifts from the individuals using the services to all citizens, in the form of higher property taxes. The League encourages this committee to vote against HB 2119 to give cities the opportunity to fund emergency services in the most efficient and equitable manner.

As a point of clarification, the "rescue service fees are charges established by a governing body to recover part of the cost for providing rescue services to non-residents." (see attachment "Rescue Service Fees Fact and Information Sheet"). Salina imposes the fee only for services that require particularly expensive equipment and manpower, including vehicle extrication, trench rescue, and swift-water rescue. This fee was established to fund a specialized city service, not a tax imposed upon crashes and fender-benders within city limits.

Given the pressing budgetary constraints of government, Salina and other cities in Kansas should be allowed to ensure that the city can provide superior rescue service without seeking higher property taxes to achieve its objective. The League encourages the Senate Committee on Financial Institutions and Insurance to vote against House Bill 2119. Thank you for your consideration of this testimony.

*FI&I Committee
3-9-11
Attachment 8*



**SALINA FIRE DEPARTMENT
OFFICE OF THE FIRE CHIEF**

**RESCUE SERVICE FEES
FACT AND INFORMATION SHEET**

What are Rescue Service Fees?

Rescue Service Fees are charges established by a governing body to recover part of the cost for providing rescue services to non-residents.

Who do the fees impact?

The fees are only charged to non-residents of Saline County for rescue services that include vehicle extrication and specialized rescue situations including trench rescue, high angle rescue, confined space rescue, swift water rescue, and other technical rescue situations.

What are the intended fees?

The rescue truck is billed at \$350 per hour and Incident Command operations are \$150 per hour. One hour minimum. Nationally, rescue service fees will normally run from \$300 to \$500 depending on the area of the country and the size of department.

Why would we charge for rescue services?

Specialized rescue equipment and training is very expensive. The amount of training required continues to increase at a significant rate due to the complexity of rescue situations, as well as, the skills necessary to safely conduct these operations.

Why charge non-residents for rescue services?

Residents of the City of Salina and Saline County support the delivery of fire services through property taxes, sales taxes, and various other revenue streams. It is an investment on the resident's part to provide critical services to the community. Specialized rescue situations are beyond basic fire protection and have grown in complexity and expense at a rapid rate. When a non-resident is the recipient of these services they essentially are benefiting from a service they have not helped to provide. Many communities have adopted the position that it is not equitable or fair that the local taxpayer shoulder the entire burden for providing specialized rescue services.

Is there legal authority for these types of fees?

Yes. The powers granted to "Cities and Municipalities" by the State of Kansas allows for the establishment of these types of fees for service.

What is the primary purpose of collecting the fees?

The purposes of the fees are to help in replacing, repairing, and maintaining specialized rescue equipment including the rescue vehicles. Additionally, the fees will be used to provided advanced rescue training and educational equipment (props, simulators, and such).

November 16, 2007

What is the anticipated revenue from the fees?

Last year the Salina Fire Department responded to 179 incidents where rescue services were required. Based on this alarm loading and the general experience with this type of fee structure the anticipated revenue will be \$25,000 to \$30,000 per year.

In the case of vehicular accidents, why are non-resident drivers of charged the fee instead of the vehicle owner?

The legal system will determine ultimately who is at fault in most all vehicle accidents. All of the expenses and charges will be sustained by the responsible parties insurance company under their medical or liability coverage provisions or may even fall under the insurance of the vehicle owner, in any case, one or the other will have to cover the costs.

Have we asked our Risk Management resources to review this concept?

Yes. At Risk Manager, Nancy Schussler's recommendation, Sunflower Insurance has reviewed the concept and provided an opinion that normally charges such as these are not excluded under medical coverage.

What other cities have this sort of concept in place?

While an exact number is impossible to establish by simply performing a Google search on "fire department" and "rescue fees" returns 536 hits. Some of the hits are discussions, some are actions, and some are not germane to this discussion; however, there are a significant number of jurisdictions discussing and enacting fees for rescue services (<http://www.bengaltownship.org/fire/> is one Internet example). Stillwater, Oklahoma, is one city in particular that has this same sort of program in place and has been able to provide newer rescue tools, advanced training, and help share the cost of providing the service among those that live in the community and those that benefit from the service.

What issues are important to address?

One major issue is how the funding is used and accounted for. As previously stated, the concept is not to replace the local funding for rescue services, but provide an additional cost share of those services to provide better equipment, training, and support materials. To sidestep the issue the Fire Administration is recommending that all funds collected from rescue service fees be placed in a dedicated account and that the account is allowed to accumulate funding from year to year. By doing so, it is easy to determine what the funding purchased and how the monies have been managed.

Just how expensive can the maintenance of rescue equipment be?

The Fire Department recently responded to a two vehicle accident and performed an extended extrication of a trapped driver. During the operation a small stop pin was broken on the spreader tool and a hydraulic valve failed to continue to operate. The cost in repairing the stop pin and hydraulic valve was \$2,030.

One thing the fire service has learned in responding to thousands of vehicle accidents is the higher the speed of the collision the more stress is placed on rescue tools. Higher the stress, the shorter the service life. The Salina Fire Department responds to numerous high speed collisions along the Interstates and has a critical need to maintain its rescue capability both in town and outside town.

If there is support for Rescue Service Fees, when would the City Commission receive the necessary material?

The Fire Department is ready to move ahead at the next City Commission meeting and has all the materials ready for Commission review.

November 16, 2007