

MINUTES OF THE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on March 16, 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:

Kris Kellim, Kansas Insurance Department  
Brad Smoot, American Insurance Association  
Brad Smoot, National Council of Compensation Ins.  
Kerri Spielman, Kansas Association of Insurance Agents  
Bill Sneed, State Farm Insurance

Others attending:

See attached list.

The Chair called the meeting to order.

Hearing on

**HB 2139 – Workers compensation insurance rates**

Melissa Calderwood gave an overview of the bill. She said the bill was introduced at the request of the Kansas Insurance Department whose representative indicated that the bill is a result of an actuarial study of the plan which concluded that the rates charged to risk with premium under \$2,250 are inadequate and recommended that the surcharge be applied to all risks. Miss Calderwood stated **HB 2139** as amended, would enact and amend certain workers compensation provisions and would amend an insurance rate filing law.

The bill would enact new law to authorize the State Fair Board, notwithstanding the self-insurance assessment rating provisions in the law, to purchase workers compensation insurance and would further provide that the contract for the purchase of the workers compensation insurance must comply with the competitive purchase process outlined in current law for the Department of Administration.

Miss Calderwood continued that the bill also would provide that if the State Fair Board enters into a private contract for the purchase of workers compensation insurance, the Board would no longer be subject to the self-insurance assessment and the Director of Accounts and Reports would then cease the transfer of any amounts for the self-assessment for the Board. She said if the Board opts to enter into a private contract, the bill would provide that the State Workers Compensation Self-Insurance Fund (the SSIF) would not be liable for compensation of any claims under the Workers Compensation Act relating to the Board during the term of the private contract. The Board would be required to notify the Secretary of Administration and the Kansas Health Policy Authority of the effective date of any workers compensation policy acquired pursuant to the contract provisions of the bill.

Miss Calderwood said the bill also would permit insurance companies to file up to four workers compensation loss cost multipliers and up to four policyholder dividend plans within a single insurer.

Kris Kellim, Kansas Insurance Department, testified in support of **HB 2139**. He stated this bill amends K.S.A. 40-2109 regarding the workers compensation assigned risk pool. He said generally, all employers must provide workers compensation coverage for their employees unless they are exempt. For those employers who cannot obtain coverage in the standard market, Kansas law has provided for an assigned risk pool for these employers to obtain coverage. He said in Kansas, the National Council on Compensation Insurance administers the pool and there are two carriers who have been appointed to take

## CONTINUATION SHEET

The minutes of the Financial Institutions & Insurance Committee at 9:30 a.m. on March 16, 2011, in Room 152-S of the Capitol.

these policies. (Attachment 1)

Brad Smoot, on behalf of the American Insurance Association, and National Council on Compensation Insurance, testified in support of **HB 2139** as amended. He said he likes what is being proposed. (Attachment 2) (Attachment 3)

Kerry Spielman, Kansas Association of Independent Agents, testified in support of **HB 2139**. (Attachment 4.)

The Chair closed the hearing on **HB 2139**.

Action on

### **HB 2119 – Prohibiting accident response service fees**

Bill Sneed, State Farm Insurance, said he took the original balloon submitted with his testimony and the language that the Salina Fire Marshall suggested and inserted it in the balloon and with that, he said he believes all parties are satisfied.

Senator Masterson moved to amend **HB 2119** as presented. Senator Olson seconded. Motion passed.

Senator Masterson moved to pass out **HB 2119** favorably as amended. Senator Schmidt second. Motion carried.

The meeting was adjourned at 10:00 a.m.

The next meeting is scheduled for March 17, 2011.

## SENATE FINANCIAL INSTITUTIONS & INS. COMMITTEE GUEST LIST

DATE: 3-16-11

[illegible]



# Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

---

## TESTIMONY ON

### HB 2139

## SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

March 16, 2011

Madam Chair and Members of the Committee:

I am Kris Kellim with the Kansas Insurance Department and with me today is Marty Hazen of our Property and Casualty Division who regularly works with the workers compensation assigned risk pool.

Thank you for the opportunity to present testimony in favor of HB 2139 which amends K.S.A. 40-2109 regarding the workers compensation assigned risk pool. First a little background. Generally all employers must provide workers compensation coverage for their employees unless they are exempt. For those employers who cannot obtain coverage in the standard market, Kansas law has provided for an assigned risk pool for these employers to obtain coverage. In Kansas the National Council on Compensation Insurance (NCCI) administers the pool and there are two carriers who have been appointed to take these policies.

This amendment provides two changes in Section 3. The first is clean up on page 6, lines 41 – 43 and continue on page 7, lines 1 – 5, which deletes the requirements for the pool to reduce its assessments and its size before the years 1997 and 1998 as both of these objectives have been met.

The second change on page 7, lines 6 – 9, deletes part of the sentence:

Notwithstanding the foregoing provisions of this subsection, the commissioner shall not approve rates or rating plans which produce rates or premiums for risks with less than \$2,250 annual premium that are higher than those which would be applied to such risks in the voluntary market, except that this...

This language effectively restricts surcharges to policies with premiums less than \$2,250. By deleting this sentence we will now apply the surcharge to all policies including those with premiums under \$2,250. The assigned risk plan is funded by the premiums paid by its policy holders and the application of surcharges and other rating variables. The plan has been subsidizing these lower premium policies and as a result it drives up the cost to the other

*FI&I Committee  
3-16-11  
Attachment 1*

members of the plan and causes the plan to be actuarially unsound as to these risks. This amendment was recommended in an actuarial study of the plan which concluded that the rates charged to risks with premium under \$2,250 are inadequate and recommended that the surcharge be applied to all risks.

Additionally, since these risks are not now being surcharged, there is no incentive for them to move into the voluntary market. Actually as this provision exists in the current law it operates as an incentive to stay into the plan, by keeping their rates artificially low. The assigned risk pool was meant to be the plan of last resort for workers compensation coverage for employers that have been denied in the private marketplace. It was not intended to be a subsidized pool which competes with the voluntary workers compensation market.

The House Committee of the Whole amended the bill to include New Section 1. This added language to authorize the state fair board to purchase workers compensation insurance. We offer an amendment to line 9 to add "from an admitted carrier". This will provide that any purchase be from a carrier admitted to do business in Kansas. This gives the insurance Department authority to resolve any disputes with such carrier and the board. We understand that this amendment is agreeable with the sponsor of the amendment. With this amendment we support this Section.

The next proposed amendment strikes lines 42 and 43 of page 2, through lines 1 – 3 of page 3 of Section 2, addressing loss cost multipliers. This amendment is in conjunction with the amendment described in the next paragraph. We also offer new language to be inserted at the end of K.S.A. 40-955 in Section 2. This amendment will prevent entities engaged in shared employment relationships with multiple employers from purchasing master policies to cover the employees of those employers. Requiring such entities to purchase policies on a multiple coordinated basis will ensure that business' claims experience are tracked, so that when an employer leaves a shared employment arrangement its claims experience is accounted for.

Next we offer a new amendment to K.S.A. 40-954. This is offered as a substitute to the language regarding loss cost multipliers in Section 2. Our amendment strikes the phrase "except for works compensation" from subsection (c) of 40-954. This change will allow schedule rating of workers compensation policies, which is currently allowed for other types of insurance. The flexibility provided by schedule rating will allow insurance companies to more accurately rate and price workers compensation policies. This amendment is supported by NCCI, KAIA, and the Insurance Department. In conjunction with this amendment we propose striking the offered language on page 2, lines 42 and 43 through page 3, lines 1 – 3 as no longer needed.

For these reasons we respectfully request the passage of HB 2139 with the requested amendments. I would be happy to answer any questions.

# BRAD SMOOT

ATTORNEY AT LAW

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

10200 STATE LINE ROAD  
SUITE 230  
LEAWOOD, KANSAS 66206

STATEMENT OF BRAD SMOOT  
LEGISLATIVE COUNSEL  
AMERICAN INSURANCE ASSOCIATION  
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE  
Regarding 2011 House Bill 2139, As Amended  
March 16, 2011

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 2139, as amended.

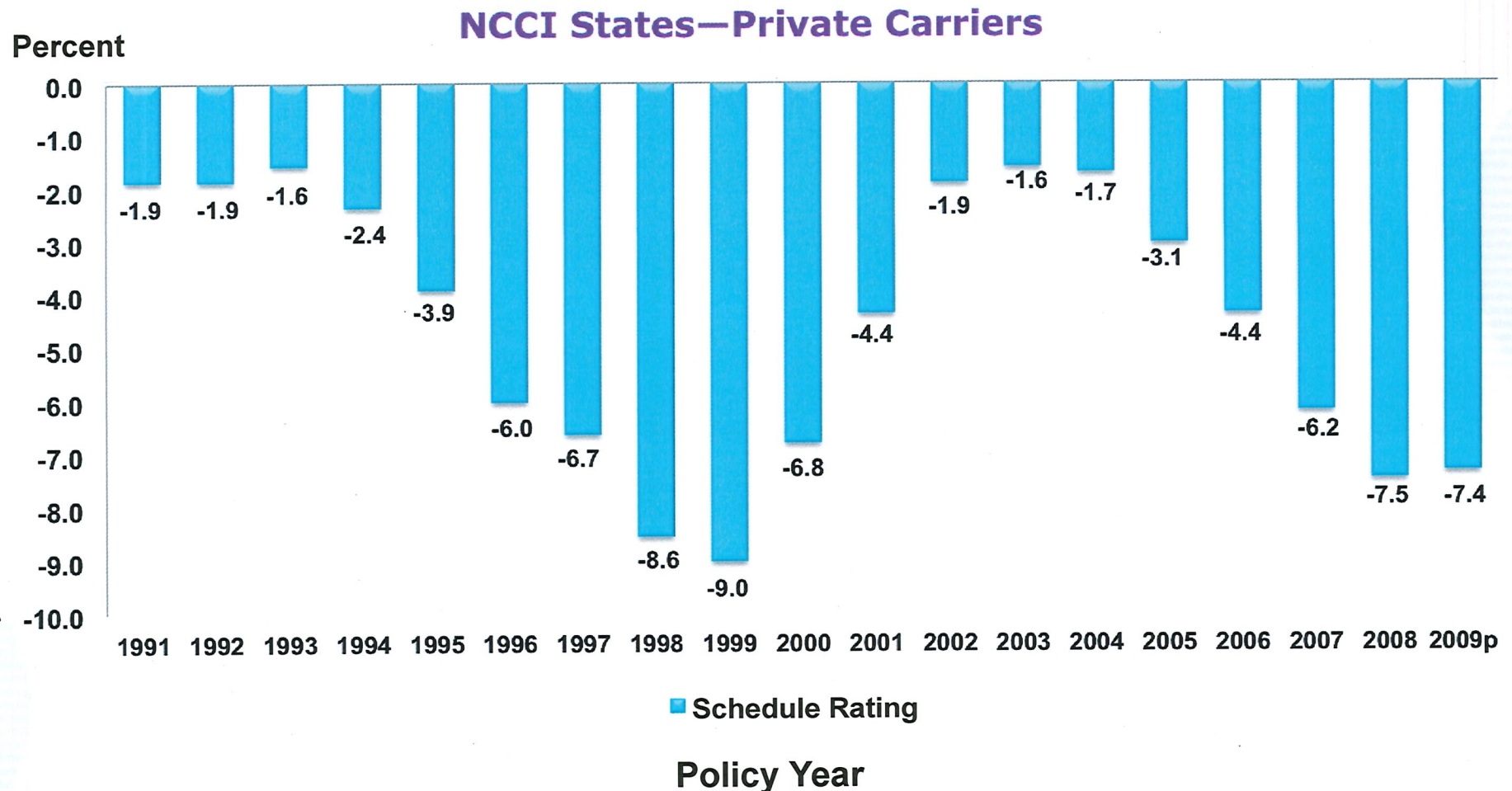
AIA supports the original provisions of HB 2139. We too believe that the current statutory provisions artificially induce certain small risks to purchase workers compensation coverage in the assigned risk plan. Consequently, those employers whose risk characteristics are such that they must be in the assigned risk plan are subsidizing these small groups unnecessarily. And because the plan annually runs a \$1 million deficit, all employers outside the plan who purchase coverage in the voluntary market must subsidize it. That is not how the system is supposed to work and HB 2139 will go a long way to correcting these aberrations.

We also support the House Committee amendments to allow up to 4 loss cost multipliers per workers comp insurer. Currently, carriers have limited flexibility in pricing their policies to reflect the true risk of a given employer. The amendment would add to the insurer's flexibility in pricing a policy and increase the opportunities for employers to get the best price possible. However, we believe there is an even better method for adding pricing flexibility and enabling employers to get the best premium rates. That's with the use of what is known as "scheduled" rating. It's a system of credits and debits added and subtracted to a base rate that reflect the actual risk characteristics of a given employer. Because use of such rating plans allows the insurer to accurately gauge the risk of a particular business, the average cost of such policies tends to go down. Attached, please find a chart prepared by NCCI showing the average savings over many years for policyholders in states that allow scheduled rating.

Scheduled rating has been around for a long time and is used for workers compensation in at least 25 other states. In Kansas, we use scheduled rating for other commercial insurance lines of property and casualty insurance. These rating plans are approved by the Kansas Insurance Department which will be able to apply the same statutory rules and its years of experience to the business of regulating scheduled rating for workers compensation as well. On behalf of AIA, I urge the committee to adopt the proposed amendment regarding the use of scheduled rating in workers compensation insurance and act favorably on the entire bill. Thank you.

*F.I.I. Committee  
3-16-11  
Attachment 2*

# Countrywide—Impact of Schedule Rating on Workers Compensation Premium



p Preliminary

Based on data through 12/31/2009 for the states where NCCI provides ratemaking services



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  
NATIONAL COUNCIL ON COMPENSATION INSURANCE  
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE  
Regarding 2011 House Bill 2139, As Amended  
March 16, 2011

Madam Chair and Members:

On behalf of the NCCI, the National Council on Compensation Insurance, I am pleased to have the opportunity to offer support for 2011 HB 2139, introduced at the request of the Kansas Insurance Department. NCCI manages the nation's largest database of workers compensation insurance information. NCCI analyzes industry trends, prepares workers compensation insurance rate recommendations, determines the cost of proposed legislation and provides a variety of services, tools and publications to maintain a healthy workers compensation insurance system. In addition, NCCI contracts with the state of Kansas to administer the state's assigned risk plan for employers who are unable to obtain workers compensation coverage in the open (or voluntary) market.

The provisions removed from current law by HB 2139 are provisions that have out lived their usefulness. The assigned risk plan for workers compensation is designed to be the plan of "last resort;" not a plan priced so low that it competes with the private market. Under the current statutory rules, it is cheaper for some small employers to go into the government-created assigned risk plan rather than buy insurance where most other employers do, in the open market. These statutory restrictions cause 25% of those employers who must buy coverage in the assigned risk plan to subsidize the other 75% of employers in the plan. In addition, the Kansas assigned risk plan has run a deficit for the last 12 years, which means the plan must be further subsidized by all employers who buy insurance in the voluntary market.

While a certain amount of risk sharing is normal and appropriate in any insurance mechanism, a statutory structure that mandates that some employers subsidize other employers unnecessarily and which drives insurance purchasers out of the open market and into a government program is fundamentally unfair and undesirable. Such is the situation presented by the current law. HB 2139 would remove these out dated pricing restrictions and give the governing board of the Kansas Workers Compensation Insurance Plan and the Kansas Insurance Department the necessary flexibility to determine the appropriate pricing methods for this government run insurance safety net. We urge the Committee to act favorably on HB 2139.

*F I & I Committee*  
*3-16-11*  
*Attachment 3*



# Kansas Association of Insurance Agents



**Testimony on HB 2139**  
**Before the Senate Financial Institutions and Insurance Committee**  
**By Kerri Spielman**  
**March 16, 2011**

Thank you, Madam Chair and members of the committee, for the opportunity to testify on HB 2139. My name is Kerri Spielman and I represent the Kansas Association of Insurance Agents. We have approximately 450 member agencies across the state and another 110 branch offices that employ a total of over 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

### **Workers Compensation Modernization**

The Kansas Association of Insurance Agents (KAIA) supports workers compensation insurance modernization as well as increased private market competition. Very few changes have been made in the past decade to workers compensation insurance in Kansas. As a result, the market in Kansas is not as competitive as it could be, and therefore, pricing is not as good as it could be.

The provisions of HB 2139 and the amendments being brought by the Kansas Insurance Department will provide tools to more accurately rate and price risk. These tools will increase private market competition, insure accurate rating in the marketplace, and ultimately lower the cost of doing business in Kansas.

### **The Provisions of the Bill**

The purpose of HB 2139 and the amendments is to give the Kansas Insurance Department, NCCI, and insurance companies the ability to rate and price workers compensation insurance accurately.

- The base bill of HB 2139, currently Section 3, is designed to modernize the assigned risk pool for workers compensation insurance for businesses. The assigned risk pool is designed to be a safety net for businesses that cannot get workers compensation insurance in the private market. Either their claims experience is too high or the risk is one that the private market doesn't want. In a nutshell, it gives the Kansas Insurance Department and NCCI the ability to rate and charge for risks accurately.

*FI&I Committee*  
*3-16-11*  
*Attachment 4*



- Speaker O'Neal added an amendment on the House floor, currently Section 1, that gives the State Fair Plan the ability to access the private market for workers compensation insurance.
- Section 2 of the bill gives companies another tool to rate and price risks accurately. It will give companies some limited flexibility that will allow them to be more competitive in their pricing and ultimately lower costs for business. This amendment was brought by KAIA in the House Insurance Committee.

After the bill passed the House, KAIA continued to work with the Kansas Insurance Department, NCCI, and others in an attempt to insure the private market can accurately rate and price workers compensation insurance. To that end, KAIA supports the amendments that the Kansas Insurance Department is proposing. Inclusion of **all** of these amendments will improve the workers compensation insurance market in Kansas.

#### **The Results: Better Competition, More Accurate Pricing**

Again, KAIA supports modernization of workers compensation insurance in Kansas. With HB 2139 and the proposed amendments, risk will be priced more accurately and private market competition will increase. Ultimately, Kansas consumers and businesses will benefit.

Thank you for the opportunity to appear before you to testify in support of the amendments being brought by the Kansas Insurance Department and, subsequently, HB 2139.

4-2



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 (c) ~~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

technical rescue situations, including, but not  
 limited to, vehicle extrication, trench rescue,  
 high-angle rescue, confined-space rescue and  
 swift-water rescue

actual costs of

involving hazardous material.

FI & I Committee  
 3-16-11  
 Attachment 5

FI & I Committee  
 3-16-11  
 Attachment 5

5-2

MAR-10-2011 07:55

POLSINELLI

7862331939

P.004

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

5-2