

# Report of the Special Committee on Financial Institutions and Insurance to the 2018 Kansas Legislature

**CHAIRPERSON:** Senator Jeff Longbine

**VICE-CHAIRPERSON:** Representative Jim Kelly

**OTHER MEMBERS:** Senators Rick Billinger and Lynn Rogers; and Representatives Cindy Neighbor, Randy Powell, and Jene Vickrey

## **STUDY TOPIC**

*Review of 2017 Legislation Affecting Certain Consumer Loans and the Uniform Consumer Credit Code (UCCC) [HB 2267] and 2017 Legislation Modifying Automobile Liability Insurance Policy Requirements [HB 2104]*

The Committee is directed to:

- Study the impact of 2017 HB 2267. This review would include a study of current finance charges, rates, and terms under the UCCC; the impact of the proposed legislation and potential modifications related to the Consumer Financial Protection Bureau's anticipated Final Rule on small dollar lending on financial institutions, loan companies, and Kansas consumers; and the current regulatory environment in Kansas; and
- Review the potential impact associated with amendments to the Insurance Code governing automobile liability insurance policies contained in 2017 HB 2104. Such study should include a review of insurance policy pricing and the marketplace, cost estimates and other available data relating to impact on premiums and policyholders, and pertinent driver data.

# Special Committee on Financial Institutions and Insurance

## KANSAS UNIFORM CONSUMER CREDIT CODE

### Conclusions and Recommendations

The Committee makes no recommendation relative to 2017 HB 2267 or the introduction of any legislation affecting certain consumer loan transactions regulated under the Kansas Uniform Consumer Credit Code (UCCC).

The Committee notes its discussion on 2017 HB 2267, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule published by the Consumer Financial Protection Bureau (CFPB) in October 2017.

- **CFPB Final Rule—implementation timeline and uncertainty.** The Committee notes concerns expressed by some conferees regarding the uncertainty of the regulatory role of the CFPB and the timing of modifications to the consumer lending provisions of the UCCC, including any state legislative action, during the prescribed 21-month implementation time period of the Final Rule. The Committee also recognizes state regulators have not had sufficient time to evaluate the Final Rule and will have the 21-month implementation period to do so.
- **Regulatory review and stakeholder involvement.** The Office of the State Bank Commissioner (OSBC) is encouraged to hold regular stakeholder meetings to assist in drafting changes to the UCCC, in light of the CFPB Final Rule and the 21-month implementation period. The Committee requests regular updates during the 2018 Session, to include review of any proposed modifications to the UCCC and implementation concerns for the OSBC, lenders, and consumers.
  - The Committee’s discussion topics also included consumer lending trends and practices, including the length of loans and whether the Final Rule would be applicable to Kansas short-term consumer loan transactions. The Committee also requests further consideration of other trends or practices, such as rolling (or consecutive) loans.

*Proposed Legislation:* None.

### BACKGROUND

The charge to the Special Committee on Financial Institutions and Insurance (Committee) was to review and make recommendations on two topics assigned by the Legislative Coordinating Council (LCC): legislation affecting certain consumer loan transactions and the Kansas

Uniform Consumer Credit Code (UCCC) (2017 HB 2267) and legislation modifying automobile liability insurance policy requirements (2017 HB 2104). The LCC authorized the Committee to meet for one day.

The Committee was directed to study the impact of 2017 HB 2267, including a review of current finance charges, rates, and terms under the

UCCC; the impact of the proposed legislation and potential modifications related to the CFPB's anticipated Final Rule on small dollar lending on financial institutions, loan companies, and Kansas consumers; and the current regulatory environment in Kansas. (*Note:* The Final Rule was released on October 5, 2017.)

HB 2267 was introduced by the House Committee on Financial Institutions and Pensions. On February 15, 2017, the House Committee approved a study request to be submitted to the LCC. On February 22, 2017, the bill was re-referred to the House Committee on Federal and State Affairs. The study request was jointly signed by Representative Kelly (Chairperson, House Committee on Financial Institutions and Pensions) and Representative Barker (Chairperson, House Committee on Federal and State Affairs). A companion version to the bill, SB 234, was introduced by the Senate Committee on Federal and State Affairs on March 20, 2017, and referred to the Senate Committee on March 21, 2017.

## COMMITTEE ACTIVITIES

The Committee met on October 11, 2017, and considered both assigned topics. As part of its review of the UCCC topic, the Committee received an overview of the assigned bill; a review of available resources on the broader topic of consumer lending and prior legislative consideration of the topic; a presentation from the Deputy Commissioner, Consumer and Mortgage Lending Division (Code Administrator), Office of the State Bank Commissioner (OSBC), on small dollar lending regulation, current lending trends, and a preliminary review of the new Final Rule; and formal testimony from proponents, a neutral party, and opponents on HB 2267.

**Overview of the topic; small dollar lending regulation in Kansas and the CFPB Final Rule.** Committee staff provided an overview of resources made available on the Committee's page on the Kansas Legislative Research Department (KLRD) website, including surveys on unbanked and underbanked consumers and a paper published by the Federal Reserve Bank of Kansas City regarding payday lending practices; KLRD *Briefing Book* articles on payday lending and the UCCC; a KLRD memorandum on state and federal payday lending regulation; a legislative

update provided by the OSBC in January 2017 and prior Committee minutes from an informational hearing on payday lending and short-term installment loans; a prior interim legislative report on the UCCC; and a link to the CFPB's Final Rule and the topic of small dollar lending on the CFPB website.

Information provided by Committee staff indicated 38 states have specific statutes permitting payday lending. In Kansas, two statutes in the UCCC govern payday lending (KSA 16a-2-404 and KSA 16a-2-405). A payday loan is a consumer loan transaction that has a loan amount equal to or less than \$500, a payment term between 7 and 30 days, a finance charge no greater than 15 percent of the loan, and the lender anticipates a single repayment. The statute also states a lender and related interest cannot have more than two loans outstanding to the same borrower at a time and no more than three loans to any one borrower within a 30-day calendar period. A separate statute contains provisions related to military borrowers.

The Code Administrator presented an overview of the role and responsibilities of the Consumer and Mortgage Lending Division (CML) of the OSBC. One of CML's primary responsibilities is to examine licensed entities for compliance with state and federal law. The Code Administrator summarized small dollar lending licensees in Kansas: payday only companies (49); payday only branches (136); payday and title companies (10); payday and title branches (74); title company only (7); and title only branches (42). The company and branch data review finds 66 companies, 252 branches, and 318 locations in Kansas. Title loans are offered pursuant to KSA 16a-2-401 (open-end credit statute in the UCCC) and allow a consumer to borrow money up to an amount pre-approved by the lender. The consumer is permitted either to pay the balance in full or pay in installments.

Also among the information presented by the Code Administrator was a review of trends in small dollar lending. The Code Administrator noted some lenders are moving away from the traditional payday loan model and into an installment loan product, which is also permitted under the UCCC (a presentation slide illustrated this decline from an estimated \$415 million in

payday loans in CY 2012 to \$325 million in CY 2016); a growing challenge for both state and federal regulators is unlicensed lenders that operate primarily, or only, online; and online unlicensed lenders often operate outside state or federal jurisdiction. It was further noted the CFPB rule will impact the type of small dollar lending products that lenders offer in the future.

**Final Rule on payday, vehicle title, and certain high-cost installment loans update.** The Code Administrator reviewed the timeline from the CFPB's proposal of the rule in June 2016 to announcement of the Final Rule on October 5, 2017. The implementation period established for the Final Rule will be 21 months following its publication in the *Federal Register*. (Note: The Final Rule was published in the *Federal Register* on November 17, 2017.) The Final Rule:

- Covers short-term loans (duration of less than 45 days) that are open-end or closed-end;
- Covers longer-term loans (duration of more than 45 days) that are open-end or closed-end and have a balloon payment feature;
- Exempts certain types of loans from the Final Rule, including loans for autos and consumer goods, real estate loans, credit cards, student loans, pawn loans, overdraft services, and overdraft lines of credit; and
- Exempts lenders making 2,500 or fewer loans per year and deriving 10 percent or less in revenue from the loans.

Lenders will be required to assess a borrower's ability to repay and limits are placed on the number of loans a consumer may take within a specific time frame and for short-term loans; there is a mandatory cooling-off period after three loans.

Committee discussion addressed the OSBC's concern with the growing number of unlicensed and unregulated lenders on the Internet and regulatory enforcement actions permitted by law. These entities, the Code Administrator noted,

make helping a consumer who has done business with an unlicensed, unregulated Internet lender very challenging because many of these businesses do not respond or cooperate in answering and settling complaints.

**Overview of HB 2267.** Committee staff provided the Committee with a summary of HB 2267. The bill would amend three statutes within the UCCC relating to consumer loans, as outlined below (statute, bill section).

**KSA 16a-2-401 (Section 1).** The bill would establish a lender's finance charge at a rate of 36 percent per annum, inclusive of all fees, interest, and charges contained in the loan contract, including costs of ancillary products, subject to the current limitations on prepaid finance charges within this statute for any consumer loan with open-end credit (under current law, a lender is permitted to charge a finance charge at any rate agreed to by the parties.)

**KSA 16-2-404 (Section 2).** The bill would make several modifications to consumer loan transactions, more commonly known as payday loans:

- Loan restrictions: The lender would be restricted to one outstanding loan to a borrower and any loan would be limited to a maximum of \$500. The minimum term of the loan would be the number of months equal to the sum of the loan principal and all applicable charges, divided by the maximum allowable monthly payment;
- Loan rates and charges: The lender would be required to accept prepayment from a borrower prior to the loan due date and could not charge any fee or penalty for prepayment. The maximum rate of any loan could not be more than 36 percent per annum. The total required monthly payment could not exceed the greater of 5 percent of the borrower's verified gross monthly income or 6 percent of the borrower's verified net monthly income (income would be verified pursuant to rules and regulations promulgated by the Code Administrator). Other fee provisions would include:

- The total loan charges could not exceed 50 percent of the loan principal;
  - The maximum monthly fee or charge would be 5.0 percent of the original loan principal or \$20, whichever is less; and
  - The maximum return check charge or late charge would be the lesser of 5.0 percent of the loan principal or \$20, plus any amount passed from another financial institution; and
- Lender and agency reporting: The lender would be required to disclose terms to the borrower and provide certain notices. Additionally, lenders would be required to provide annually certain information to the Code Administrator. The Code Administrator would be required to publish, at least annually, an aggregate report of this information to the public.

***KSA 16a-2-405 (Section 3).*** In relation to military borrowers, the bill would prohibit a lender from charging annual maintenance fees to military borrowers or to their dependents.

***Fiscal impact.*** According to the fiscal note prepared by the Division of the Budget, the OSBC indicates the bill's enactment would increase expenditures by \$106,250 in FY 2018 and for FY 2019. The OSBC also estimates enactment would decrease revenues by \$260,000 in FY 2018 and for FY 2019. The OSBC would require 1.0 additional full-time equivalent employee (FTE) in its Examination Division with a salary of \$45,000, \$18,650 for benefits, \$1,000 for office equipment and space, and \$8,400 for travel to comply with the bill. The OSBC also estimates a need for 0.5 additional FTE in its Licensing Division with a salary of \$22,500, \$9,700 for benefits, and \$1,000 for office equipment and space to comply with provisions of the bill. The estimated increase in expenditures relating to the bill would be ongoing. The OSBC also estimates revenues relating to payday loan transactions to decrease by approximately 70.0 percent; this estimate is based on the effect of similar legislation and caps enacted in other states. For the fiscal note, the OSBC did not include specific states used to create the estimate; however, the agency did indicate

revenues are based on volume and any decrease or increase in revenues would be dependent on how many loans are issued. Any fiscal effect associated with 2017 HB 2267 is not reflected in *The FY 2018 Governor's Budget Report*.

**Comments on HB 2267—proponents and neutral parties.** The Committee received proponent testimony from representatives of Catholic Charities of Northeast Kansas, Catholic Charities of Northern Kansas, and The Pew Charitable Trusts. Written proponent testimony was submitted by a representative of the Kansas Catholic Conference.

***Proponent testimony.*** Proponents highlighted research detailing the excessive fees and financial impact of payday lending on Kansans. A conferee provided the following example: with a typical annual percentage rate (APR) of 391 percent for a payday loan in Kansas today, a borrower of a \$300 loan would have that debt for an average period of five months and would repay a total of \$750. This proponent also highlighted Colorado's experience and changes in 2010 law that better align the interests of borrowers and lenders and would be compatible with federal rules. HB 2267 was described as an improvement upon the Colorado model, as it would make providing loans easier for Kansas lenders. Among the bill features addressed in proponent testimony were affordable monthly payments, reasonable fees, and enough time to repay loans. Proponents also commented on the development of the Kansas Loan Pool Project (KLPP), which has helped more than 100 families refinance more than \$150,000 in payday loans since KLPP's inception. One proponent spoke to her own experience with payday lending and her inability to repay the loans, as well as KLPP clients' experiences with payday lending practices. Proponents urged the Committee to take appropriate legislative action to alleviate the financial burden of individuals utilizing short-term, high-interest loans.

***Neutral testimony.*** The Committee received neutral testimony from the Code Administrator, OSBC. The conferee related that the bill, as drafted, presents potential challenges and ambiguities that would affect OSBC's ability to appropriately regulate certain financial products authorized under the UCCC. She noted several provisions in the bill add complexity to the UCCC.

She also stated it is unclear how HB 2267 would interact with the Final Rule and noted the length of the Final Rule's implementation period. Further, the conferee acknowledged, the UCCC needs to be updated because many consumer credit products exist today that were not contemplated in 1973 when the UCCC was first enacted.

**Comments on HB 2267—opponents.** The Committee received testimony from representatives of Advance America, Anderson Financial Services d.b.a. LoanMax, and the Kansas Community Financial Services Association. Written opponent testimony was submitted by a branch manager for Advance America. Opponents addressed the bill's impact on the short-term lending industry in Kansas, suggesting it would not improve the industry but, rather, would completely eliminate the industry, reduce financial choice, and force consumers to turn to costlier, less regulated forms of short-term credit. A conferee noted payday loan transaction rates in Kansas are among the lowest in the country and are as low or lower than those of surrounding states, and Kansas has some of the strongest pro-consumer protections in statute, including military best practices lending requirements, forms available in Spanish, 24-hour right of rescission, no loan rollovers, no criminal prosecution for bad checks, and a limit of two outstanding loans per customer. A representative for a title loan company testified title loan products provide a reliable, fully regulated source of short-term cash and further stated, in the company's experience, the average loan is less than \$560 and the average term of the loan is only three months. Customers may pay in full at any time. A conferee noted the full ramifications of the Final Rule were unknown at the time of the meeting, but will be discovered over the 21-month implementation period, which would make statutory changes in 2018 or closer to the actual implementation date more prudent. Opponents requested the Legislature not proceed with HB 2267 or related legislation at this time.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee makes no recommendation relative to 2017 HB 2267 or introduction of any legislation affecting certain consumer loan transactions regulated under the UCCC.

The Committee notes its discussion on 2017 HB 2267, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule recently published by the CFPB.

- **CFPB Final Rule—implementation timeline and uncertainty.** The Committee notes concerns expressed by some conferees regarding the uncertainty of the regulatory role of the CFPB and the timing of modifications to the consumer lending provisions of the UCCC, including any state legislative action, during the prescribed 21-month implementation time period for the Final Rule. The Committee also recognizes state regulators have not had sufficient time to evaluate the Final Rule and will have the 21-month implementation period to do so.
- **Regulatory review and stakeholder involvement.** The OSBC is encouraged to hold regular stakeholder meetings to assist in drafting changes to the UCCC, in light of the CFPB Final Rule and the 21-month implementation period. The Committee requests regular updates during the 2018 Legislative Session, to include review of any proposed modifications to the UCCC and implementation concerns for the OSBC, lenders, and consumers.
  - The Committee's discussion also included consumer lending trends and practices, including the length of loans and whether the Final Rule would be applicable to Kansas short-term consumer loan transactions. The Committee also requests further consideration of other trends or practices, such as rolling (or consecutive) loans.

# Special Committee on Financial Institutions and Insurance

## MINIMUM MOTOR VEHICLE LIABILITY INSURANCE

### Conclusions and Recommendations

The Committee makes no recommendation relative to 2017 HB 2104 or the introduction of any legislation that would increase the minimum limits of liability for bodily injury and amend provisions relating to uninsured and underinsured motorist coverage to prohibit setoff.

The Committee notes its discussion on 2017 HB 2104, the information provided on prior legislative consideration of the broader topic of uninsured motorists, and available automobile insurance marketplace data and driver data. The Committee also notes the bill continues to reside in the House Committee on Insurance, and the Committee encourages the review of data and analysis from its discussion that is detailed below.

- **Stakeholder input.** The Committee discussed convening the various groups to determine whether a more comprehensive proposal, not just adjustments to the two bodily injury limits, could be created. The Committee notes past discussions and the difficulty these complex issues present in bringing all parties to the table and reaching compromise.
- **Data requested.** The Committee expressed interest in seeing more up-to-date and complete numbers from stakeholders to help inform decision-making on this topic. Requested data and analysis from stakeholders would include:
  - **Insurance setoff provisions.** During discussion on recommendations regarding HB 2104, additional information about available policy data and cost estimates for Oklahoma and Colorado (states with experience with setoff provisions) was requested. The Committee would like to see statistics from states that allow setoffs and comparisons with statistics from states that do not allow setoffs;
  - **Health care cost estimates, fiscal impact on government payors.** The Committee also expressed interest in bringing health care providers, including hospitals and doctors, into the conversation to discuss what is being written off in terms of uncompensated care, and include what the transfer or “shifted” costs are, especially in the instances of Medicare and Medicaid, and the effect on taxpayers; and
  - **Kansas insurance premiums, costs to all policyholders.** The Committee requests data on what the automobile liability insurance premiums would be and what the setoff would be separately, then combined, and the effects on all rate payers (*i.e.*, Kansas motorists required to maintain financial responsibility).

**Proposed Legislation:** None.

## BACKGROUND

The charge to the Special Committee on Financial Institutions and Insurance (Committee) was to review and make recommendations on two topics assigned by the Legislative Coordinating Council (LCC): legislation affecting certain consumer loan transactions and the Kansas Uniform Consumer Credit Code (2017 HB 2267) and legislation modifying automobile liability insurance policy requirements (2017 HB 2104). The Committee was authorized to meet for one day.

The Committee was directed to review the potential impact associated with amendments to the Insurance Code governing automobile liability insurance policies and consider in its review these factors: insurance policy pricing and the marketplace, including the pricing of auto insurance policies, how policies are sold to Kansas motorists, and how pricing of policies could affect persons who have difficulty affording compulsory coverage; estimates and other available data relating to this topic, including the average premium changes associated with changes to the bodily injury liability minimum limits for policyholders; and data on individuals with suspended driver's licenses and other pertinent driver data.

HB 2104 was introduced by the House Committee on Insurance at the request of Representative Hodge. The House Committee held hearings on the bill in February 2017 and heard from proponents, who included private citizens, attorneys representing injured persons, and insurance agents, and from opponents, who included representatives of insurance companies and an automobile leasing company. On March 16, 2017, the House Committee approved a study request to be submitted to the LCC.

## COMMITTEE ACTIVITIES

The Committee met on October 11, 2017, and considered both assigned topics. As part of its review of the automobile liability insurance topic, the Committee received an overview of the assigned bill; a review of available resources on the broader topic of uninsured and underinsured motorists and prior legislative consideration of the

topic; comment from the Commissioner of Insurance; a staff review of published data and driver data submitted by the Kansas Department of Revenue; and formal testimony from proponents and opponents on HB 2104.

## Topic Overview

**History of Kansas law and legislation; recent report.** Committee staff reviewed the report of the 2015 Special Committee on Insurance, which also included a study of automobile liability insurance policy requirements. Report information provided included enacted law and legislation considered relating to the assigned topic. Minimum motor vehicle liability insurance policy limits were first enacted in 1957 with coverage minimum limits in any one accident of \$5,000 for bodily injury to or death of one person and \$10,000 for bodily injury to or death of two or more persons, and \$1,000 for harm to or destruction of the property of others. Coverage limits, when referenced, often are listed to reflect the limits in sequential order and separated by a slash mark; the 1957 limits would be indicated as "\$5,000/\$10,000/\$1,000." In 1973, enacted Sub. for HB 1129 included an increase in the limits to \$15,000/\$30,000/\$5,000. In 1974, enacted SB 918 codified the requirements, which were not changed, at KSA 40-3107. In 1981, the enactment of SB 371 amended those limits upward to \$25,000/\$50,000/\$10,000, the statutory limits that continue in effect to date. HB 2231, also introduced in 1981, proposed the same limits as 1981 SB 371. In 1984, technical changes were made to KSA 40-3107; the changes did not affect the policy coverage limits.

No further legislation related to increasing minimum policy coverage limits was introduced until the 1989 Legislative Session, when HB 2482 would have increased the minimum coverage limits to \$50,000/\$100,000/\$20,000. A hearing on the bill took place on March 15, 1989, before the House Committee on Insurance, but no further action was taken. Minimum policy coverage limit legislation was introduced in 1995, with SB 369 proposing an increase in the limits to \$50,000/\$100,000/\$20,000. The following year, HB 2844 was introduced, seeking the same minimum policy coverage limits sought in 1995. In 1998, SB 634 was introduced by the Senate Committee on Judiciary to address minimum

policy coverage limits. The bill proposed limits of \$100,000/\$200,000/\$40,000. The bill was referred to the Senate Committee on Financial Institutions and Insurance, but no hearing was held. The bill died in Committee. In 2012, HB 2679 was introduced by the House Committee on Insurance. The bill would have increased the minimum policy coverage limits to \$50,000/\$100,000/\$25,000. The bill was referred to the House Committee on Insurance, but no hearing was held on the bill. The bill died in Committee at the end of the 2012 Legislative Session.

Most recently, 2015 HB 2067 was introduced, a hearing was held in the House Committee on Insurance, and an interim study was requested on the bill. The bill would have raised the limits to \$50,000/\$75,000/\$35,000. The Special Committee on Insurance was tasked with, among other things, reviewing the need to increase minimum motor vehicle liability insurance policy limits. Committee staff reviewed the report's findings, noting the Special Committee recommended one bill for introduction. Its bill, 2016 HB 2446, addressed one of the three limits—property damage—increasing this limit from \$10,000 to \$25,000. HB 2446 was passed and enacted during the 2016 Legislative Session and, in addition to the increase in the property damage limit, the bill specified that beginning with the 2026 Legislative Interim and at least every ten years thereafter, subject to authorization by the LCC, a legislative interim study committee is required to study whether the minimum motor vehicle liability insurance limits for bodily injury or death of one or more persons and for harm to or destruction of property of others should be adjusted.

**Statutory setoff in Kansas; states' approaches.** Committee staff reviewed provisions in KSA 40-284(b), which requires Kansas motorists to have both uninsured motorist (UM) and underinsured motorist (UIM) coverage. Because Kansas motorists are required to have a minimum automobile liability insurance of \$25,000 for bodily injury to or death of one person in any one accident, the analyst explained, the motorist is also required to have \$25,000 in UM/UIM coverage. UIM coverage is insurance the policyholder has with his or her own insurer. However, this does not mean, in the event of an accident, a policyholder will access \$25,000 from the negligent motorist and \$25,000 from the

motorist's own UIM coverage for a total of \$50,000 in coverage. In order to access any benefits under UIM coverage, the injured motorist must have bodily injury damages that exceed the negligent motorist's liability coverage and the negligent motorist's available liability coverage must be less than the injured motorist's available UIM coverage. When both motorists have minimum coverage liability policies, no UIM coverage is available to the injured motorist. The insurer may reduce the policyholder's UIM coverage by the limits of the negligent motorist's insurance coverage, known as a "setoff" or "credit." HB 2104 would eliminate this "setoff," so a motorist could access his or her automobile liability limits and UIM coverage.

According to the Insurance Information Institute (III), approximately 20 jurisdictions require UM coverage and only a handful of states require motorists to purchase UIM coverage. Comparative information was presented outlining law, relevant case law, and other guidance for select states that allow setoff (Alabama, Alaska, California, Delaware, Indiana, and Missouri) and select states that prohibit setoff (Arkansas, Colorado, and Oklahoma).

**Personal automobile liability insurance marketplace.** Committee staff reviewed published comparative data and provided three charts:

- *Top 10 Most Expensive and Least Expensive States for Auto Insurance, 2014.* Kansas ranks just outside the ten least expensive states, with an overall rank of 39<sup>th</sup>. The most expensive state, New Jersey, had an average insurance buyer expenditure of \$1,263.67 and the least expensive state, Idaho, had an average expenditure of \$571.94. Kansas' average expenditure was \$688.82. Average expenditure is equal to the total written premium divided by liability car years. A car year is equal to 365 days of insured coverage for a single vehicle. [Chart source: National Association of Insurance Commissioners (NAIC), 2017, data published by the III.]
- *Average Expenditures for Auto Insurance by State, 2010-2014.* This chart is an expanded version of the above-described

chart and details annual expenditures by three policy components of automobile insurance—liability, collision, and comprehensive coverages—and average expenditure by year. For example, the average expenditure for Kansas of \$688.82 is made up of liability (\$354.24), collision (\$257.88), and comprehensive (\$237.67).

- The analyst also detailed Kansas average expenditures by year and the national average: 2013—\$660.28 (Kansas)/\$866.31 (national); 2012—\$632.07/\$838.49; 2011—\$625.92/\$795.00; and 2010—\$625.17/\$789.29. [Chart source: NAIC, 2017 (exported data).]
- The analyst reported archived data indicates Kansas was ranked 6<sup>th</sup> least expensive, with an average expenditure of \$568 in 2007.
- *Private Passenger Cars Insured—Shared and Voluntary Markets, 2014.* Kansas reported 2,286,148 in its voluntary market (able to be insured in the commercial marketplace) and 1,709 in the shared market for a total of 2,287,857. This equates to 0.075 percent of insureds in the shared market. Assigned risk plans and other similar plans are qualified as shared (or residual) market. [Chart source: AIPSO; information exported from III website.]

**Division of Vehicles' data.** Committee staff reviewed written testimony submitted by a representative of the Kansas Department of Revenue. The Division of Vehicles (Division) summarized action taken by the Division to suspend driver's licenses (all three tables detailed below) and vehicle registrations (table 3 only). Testimony indicated the data provided could include an individual driver multiple times due to different occurrences. At a higher level, the Division reported, it has 3,237,146 records of violations, failure to meet agreed-to responsibilities, and actions taken as a result and 212,335 of them are suspensions. Testimony indicated some suspensions are associated with out-of-state drivers and are not specific to

insurance-related issues. Calendar year data for 2011-2016 are reported below:

- *Traffic convictions for no proof of insurance (KSA 2016 Supp. 40-3104 or city code equivalent):* 2011—12,185; 2012—12,650; 2013—11,411; 2014—11,902; 2015—11,177; and 2016—11,116.
- *Suspensions due to missed SR 22 filings (administrative action, suspension of license based on report of insurance lapse):* 2011—23,624; 2012—21,273; 2013—19,596; 2014—18,644; 2015—17,845; and 2016—17,056.
- *Suspensions due to accident with no insurance (administrative action, suspension of license and registration because driver/owner/vehicle was involved in accident and did not have required insurance):* 2011—4,129; 2012—3,816; 2013—3,240; 2014—2,995; 2015—2,817; and 2016—3,542.

**Comment provided by the Commissioner of Insurance.** The Commissioner of Insurance (Commissioner) provided the Committee with a resource guide on shopping for automobile insurance policies. (This guide outlines state laws, required and optional coverage, policy components, and other factors to consider when purchasing a policy.) He urged the Committee to use the Kansas Insurance Department (KID) anytime for input, collaboration, and research regarding any insurance topic. He noted KID is very concerned about changes that will increase automobile liability insurance costs and increase the uninsured motorist rate. The Commissioner referenced one of three indicators in the data KLRD provided (liability insurance premiums) and commented on Kansas' number being much lower than the national average given the current limits.

## **HB 2104**

**Overview and fiscal information.** Committee staff provided the Committee with a summary of HB 2104. The bill would amend two statutes relating to motor vehicle liability insurance. The bill would amend the law governing UM and UIM

coverage (KSA 40-284) to require any automobile liability insurance policy renewed, delivered, or issued for delivery on and after January 1, 2018, contain a provision with coverage limits equal to the limits of liability coverage for bodily injury or death in such policy sold to the named insured for payment of damages from the uninsured owner or operator of a motor vehicle. The bill would provide that any UM coverage must include an UIM provision with coverage limits equal to the limits of liability provided by such UM coverage. The bill also would specify the amount of available UIM coverage shall not be reduced because of any payment by or on behalf of the owner or operator of the other motor vehicle or any third party.

The bill also would amend the Kansas Automobile Injury Reparations Act (KAIRA) (KSA 2016 Supp. 40-3107) to increase the minimum limit on insurance for bodily injury or death of one person from \$25,000 to \$50,000, and the limit for bodily injury or death of two or more persons from \$50,000 to \$100,000, on and after January 1, 2018.

**Fiscal impact.** According to the fiscal note prepared by the Division of the Budget, KID indicates enactment of HB 2104 would likely result in Kansas consumers paying higher premiums for motorist insurance coverage. However, KID states that any premium increase would be negligible. In addition, the bill could increase insurance premium taxes collected from insurance companies as a result of higher premiums, reduce insurance premium taxes collected from insurance companies as a result of some consumers choosing not to pay higher premiums and becoming uninsured, or result in a combination of the previous two scenarios. KID indicates it cannot estimate the fiscal effect on insurance premium taxes as a result of enactment of the bill. Any fiscal effect associated with 2017 HB 2104 is not reflected in *The FY 2018 Governor's Budget Report*.

**Comments on HB 2104—proponents.** The following association representatives and individuals appeared before the Committee and provided testimony in support of the bill: representatives of the Kansas DUI Impact Center and the Kansas Trial Lawyers Association, one

insurance agent, three plaintiff's attorneys, and two private citizens. One attorney's presentation included testimony from five private citizens. Additional written proponent testimony was submitted by two private citizens.

Proponents generally described the minimum limits for automobile liability coverage as outdated and spoke to concerns about the inadequate protection afforded to consumers by this coverage. Proponents pointed to economic changes in the past 35 years and commented on the cost shift from some motorists onto other motorists, to health insurers and hospitals, to employers, and to government payors. Proponent testimony also addressed injured motorists and the inability for an injured person with minimum limits of coverage to access UIM coverage. An attorney noted when both drivers have \$25,000/\$50,000 policies, the UIM provision pays \$0. There may not be enough to pay all the damage, but due to setoff, an individual cannot get the \$25,000 amount from his or her own policy, even though they are underinsured for their own loss and paid a premium for this coverage. He concluded, by increasing limits or eliminating setoff, Kansas can provide adequate financial security, so bad drivers can pay for the injuries they cause. Private citizens and their representatives shared similar concerns about the inability to cover medical bills, missed work, and anticipated future medical expenses. Without legislative remedy, proponents concluded, KAIRA is failing its purpose because Kansans are often left with uncompensated expenses after a collision, even when they are not at fault and have purchased the required auto liability insurance.

No neutral testimony was submitted.

**Comments on HB 2104—opponents.** The Committee received testimony from representatives of the American Insurance Association; Enterprise Leasing Company of Kansas, LLC; the Kansas Automobile Insurance Plan; the Property Casualty Insurers Association of America; and the State Farm Insurance Companies. Written opponent testimony was submitted by representatives of Allstate Insurance, American Family Insurance, the Kansas Association of Property and Casualty Insurance Companies, and The General Insurance.

Opponents indicated Kansas' financial responsibility laws and the established limits require the Legislature to balance fair limits while recognizing minimum limits that become too high will create affordability problems and cause more uninsured motorists to be on the road. A representative for the state's residual market (the shared market) indicated the majority of the plan's policyholders would face increases, projected at up to 34 percent, for liability coverage that includes the proposed minimums. An opponent pointed to the average cost of auto injury claims in Kansas and indicated raising the minimum bodily injury limits is not needed. An opponent countered the stated concern that policyholders are not getting what they paid for (when purchasing required UIM coverage) as false and misleading. The company representative commented if UIM coverage is required by statute, it should be on a modified difference-in-limits basis, rather than a strict difference-in-limits to ensure that when other injured parties are involved and the liability insurance limits from the wrongdoer have been reduced to an amount that is less than the insured's UIM limits, the insured would still be able to recover an amount up to the UIM limits. Opponents urged the Legislature to be cautious when adjusting the minimum limits and to be aware of the unintended consequences of such action.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee makes no recommendation relative to HB 2104 or the introduction of any legislation that would increase the minimum limits for bodily injury and amend provisions relating to UM and UIM coverage to prohibit setoff.

The Committee notes its discussion on 2017 HB 2104, the information provided on prior legislative consideration of the broader topic of uninsured motorists, and available automobile insurance marketplace data and driver data. The Committee also notes the bill continues to reside in the House Committee on Insurance, and the Committee encourages the review of data and analysis from its discussion that is detailed below.

- **Stakeholder input.** The Committee discussed convening the various groups to determine whether a more comprehensive proposal, not just adjustments to the two bodily injury limits, could be created. The Committee notes past discussions and the difficulty the issues present in reaching compromise.
- **Data requested.** The Committee expressed interest in seeing more up-to-date and complete numbers from stakeholders to help inform decision-making on this topic. Requested data and analysis from stakeholders would include:
  - **Insurance setoff provisions.** During discussion on recommendations regarding HB 2104, additional information about available policy data and cost estimates for Oklahoma and Colorado (states with experience with setoff provisions) was requested. The Committee would like to see statistics from states that allow setoffs and comparisons with statistics from states that do not allow setoffs;
  - **Health care cost estimates and fiscal impact on government payors.** The Committee expressed interest in bringing health care providers, including hospitals and doctors, into the conversation to discuss what is being written off in terms of uncompensated care, and to include the transfer or "shifted" costs, especially in the instances of Medicare and Medicaid, and the effect on taxpayers; and
  - **Kansas insurance premiums, costs to all policyholders.** The Committee requests data on what the automobile liability insurance premiums would be and what the setoff would be separately, then combined, and the effects on all rate payers (*i.e.*, Kansas motorists required to maintain financial responsibility).