

## MINUTES

### SPECIAL COMMITTEE ON INSURANCE

December 7, 2015  
Room 152-S—Statehouse

#### Members Present

Representative Scott Schwab, Chairperson  
Senator Jeff Longbine, Vice-chairperson  
Senator Tom Hawk  
Senator Rick Wilborn (substitute for Senator Bowers)  
Representative Daniel Hawkins  
Representative Roderick Houston  
Representative Jim Kelly

#### Staff Present

Melissa Renick, Kansas Legislative Research Department  
Mark Savoy, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Eileen Ma, Office of Revisor of Statutes  
David Wiese, Office of Revisor of Statutes  
Diane Brian, Committee Assistant

#### Conferees

Jody Reel, Kansas Pharmacists Association  
Michael D. Harrold, Express Scripts  
Representative Ramon Gonzalez, Jr.  
Dr. Carl Meyer, Jr., private citizen  
Will Larson, Kansas Association of Insurance Agents  
Tim Tyner, Tyner Insurance Group, Inc.  
Dustin DeVaughn, DeVaughn James Injury Lawyers  
Larry James, DeVaughn James Injury Lawyers  
Andrie Krahl, Kansas DUI Impact Center  
Rodelio Gales, private citizen  
Kelly Rice, private citizen  
Thomas Gordon, private citizen  
Bill Sneed, State Farm Insurance  
Christine Peterson, Enterprise Rentals  
Brad Smoot, American Insurance Association

## Morning Session

### Welcome and Introductions; Overview of Assigned Topics

Chairperson Schwab called the meeting to order at 9:30 a.m. and welcomed those in attendance. He asked the Committee members and those in the gallery to pause for a moment of silence in recognition of Pearl Harbor Remembrance Day. An introduction of Committee members followed.

The Chairperson called on Melissa Renick, Kansas Legislative Research Department (KLRD), to review the following topics assigned to the Special Committee on Insurance by the Legislative Coordinating Council:

- **Pharmacy Benefits Management Legislation.** In February, the Senate Committee on Financial Institutions and Insurance reviewed 2015 SB 103, a bill that would enact new law establishing requirements for Pharmacy Benefits Managers (PBMs), including publication of price lists and the drugs included on the lists, an appeals process for network pharmacies requesting reimbursement for drugs subject to MAC, and penalties for PBMs found to be in violation of the act, and would amend the Pharmacy Benefits Manager Registration Act to update the definition of “pharmacy benefits manager.”

The Committee is to review the 2015 SB 103 and relevant issues associated with pharmacy benefits management, including maximum allowable cost (MAC) pricing of generic drugs, and the implications for Kansas pharmacies and health plans.

- **Study the need to increase the minimum motor vehicle liability insurance policy limits and, if needed, what limits would be indicated.** In February, the House Committee on Insurance held a hearing on HB 2067. The bill would have increased the mandatory minimum motor vehicle liability policy limits. After hearing proponent and opponent testimony, no action was taken. The Committee indicated the need to study the matter before action, if any, was taken. Under existing law, KSA 40-3107, the minimum policy coverage limits in any one accident is \$25,000 for bodily injury or death of one person and \$50,000 for two or more persons, and \$10,000 for harm to or destruction of the property of others. The law changes to these limits were made in 1981.

Ms. Renick addressed the format for the afternoon roundtable, which was to include representatives from State agencies, law enforcement, insurance agents, insurance companies, plaintiffs’ attorneys, and consumer perspectives, and outlined the process for preparing and publishing the two reports for the Committee.

## Review Pharmacy Benefits Management Legislation

### *Staff Overview of 2015 SB 103*

The Chairperson, recognized Eileen Ma, Office of Revisor of Statutes, to provide an overview of SB 103. Background information on PBM legislation in other states, the current bill, and registration requirements was provided by KLRD ([Attachment 1](#) and [Attachment 2](#)).

### *Update on 2015 SB 103; Comments from Interested Parties*

Jody Reel, Government Affairs Committee Chairperson, Kansas Pharmacists Association (KPhA), provided an update on discussions between the interested parties, indicating representatives of KPhA and the PBMs have met in an effort to find a common ground regarding the provisions of SB 103 [the KPhA was the primary proponent of the bill, as introduced]. After several sessions of negotiations, Ms. Reel commented, the parties reached a consensus and the language provided reflects the extensive discussions. She also noted the bill addresses the concerns stated by the Kansas Department of Health and Environment in the original fiscal note ([Attachment 3](#) and [Attachment 4](#)). Ms. Reel outlined the changes to the introduced version of SB 103, stating the consensus language:

- Requires PBMs to update the MAC list every seven business days and apply the updates within one business day;
- Adds language that the drug must be available from a wholesaler in Kansas and that source identified, whether it is for placing a drug on the MAC list, or later in the appeal section, providing the pharmacy with wholesalers where the drug can be purchased;
- Provides that the PBM establish a process for each network pharmacy provider to readily access the MAC list;
- Establishes an appeals process that provides:
  - If the pharmacy prevails, it has the ability to reverse and rebill and the resulting changes become effective going forward for all similarly situated pharmacies; and
  - If the appeal is denied, the PBM provides the appealing pharmacy the National Drug Code number from a national or regional wholesaler operating in Kansas where the drug is generally available for purchase at a price equal to or less than the MAC that may be substituted lawfully; and
- [This compromise does] [n]ot contain an enforcement provision for the Act.

At the conclusion of her testimony, Ms. Reel answered questions from the members of the Committee.

Senator Longbine asked the conferee to describe the purpose and need for the bill. The conferee stated the purpose of the bill is to improve the viability of pharmacies in the state of

Kansas by providing the pharmacies with the information they need to adequately price their drugs. The bill, as introduced, would require PBMs to update their price list every seven days so they remain in line with actual wholesale costs, require the PBM contracts to be clear about how MAC pricing is calculated, give authority to the Insurance Commissioner to oversee and enforce PBM contracts, and require PBMs to document that the drugs on their MAC pricing lists are actually available at the low price for which they are willing to reimburse pharmacies. MAC pricing, the conferee continued, will benefit Kansas communities by keeping medication available to patients and by keeping local pharmacies in business. Senator Longbine inquired as to what percentage of prescriptions filled at Ms. Reel's pharmacy require working with a PBM. The conferee estimated that 95 percent of the business is covered.

Senator Hawk inquired if dispensing fees currently are included in the PBM contracts. The conferee stated they are included. Representative Hawkins asked if there currently is an avenue for appeals. The conferee stated there is an appeals process, however in the past appeals have gone unanswered or have been declined without explanation of the decision. Representative Kelly inquired as to whether two different pharmacies could experience different results in the loss or profit on a drug. The conferee stated several factors could determine whether there is a loss or profit on the medications. Choice of wholesalers and buying groups and the availability of the drug could have a significant affect. Representative Kelly wanted to know if the prices would vary if it is a "box store" or "chain pharmacy." The conferee stated those stores can get lower prices because they have their own wholesaler and can negotiate at a national level. Representative Kelly also asked if the pharmacy can shop for a secondary provider at the time the prescription is filled. The conferee stated pharmacists are required by law to have the drugs available and would not be able to shop for a lower price. If it is an unusual drug, pharmacists can shop around for better prices.

Michael D. Harrold, Senior Director, State Government Affairs, Express Scripts, was recognized to comment on SB 103 and the compromise language presented to the Committee. He stated Express Scripts and the Kansas Pharmacy Association and its members have been negotiating during the interim and both parties have reached a compromise that would be acceptable to Express Scripts. Mr. Harrold's remarks also addressed how PBMs generally use MAC pricing and reimbursement methods, stating these methods ensure a fair reimbursement to pharmacies for generic drugs. MAC pricing was originally developed by state Medicaid programs after audit proved there was overpayment for generic medications. Today, the conferee noted, 46 Medicaid programs, multiple federal programs, and most private payers use their own MAC processes ([Attachment 5](#)). At the conclusion of his testimony, Mr. Harrold responded to questions from Committee members.

Representative Kelly noted the conferee mentioned a "few words" in the compromise were still being discussed and inquired whether a compromise was a reachable goal. The conferee stated he felt it is reachable and stated the pharmacists and the PBMs want to get there.

The Chairperson inquired about the financial impact on pharmacies in small towns and rural areas noting the losses the pharmacies may incur because of the fluctuation in the prices, specifically related to the purchase of inventory and MAC pricing *versus* the former average wholesale price methodology. He wanted to know if this issue would be addressed. The conferee agreed with the example pharmacy scenario the Chairperson presented and stated these issues could be addressed and pointed to generics being recognized as a commodity, with PBMs having not only their medical aspects but also running a business and accounting for stock. The conferee indicated this is, in part, why MAC was created, because once generic medications came on the market, state Medicaid agencies' prices went down, and the

pharmacist could pay the generic price and still charge for the name brand drug. As in any business, the conferee continued, fluctuation can affect profit and losses. With this legislation, the pharmacies should be better informed regarding cost and pricing. The Chairperson asked if others in the audience wished to comment; no others wished to speak and the topic was closed.

## **Study the Need to Increase the Minimum Motor Vehicle Liability Insurance Policy Limits and, If Needed, What Limits Would be Indicated**

### *Staff Overview of 2015 HB 2067*

The Chairperson recognized David Wiese, Office of Revisor of Statutes, to provide an overview of HB 2067 ([Attachment 6](#)). |

Ms. Renick was recognized to briefly review information KLRD made available on this topic ([Attachment 7](#)), ([Attachment 8](#)), and ([Attachment 9](#)). |

### *Formal Remarks on HB 2067*

The Chairperson opened the discussion to proponents of HB 2067.

### *Proponents*

Representative Ramon Gonzalez, Jr. spoke in support of the bill. He stated the minimum limits for insurance coverage were established over 30 years ago and noted the costs of hospital care and vehicles has significantly increased since 1985. The representative asked what the increase in limits should be and suggested the limits established in the “UBER” bill (2015 legislation) would be a place to start ([Attachment 10](#)).

Dr. Carl F. Meyer, Jr. appeared as a proponent to the bill. He described an automobile accident he had been involved in (he was driving a tractor and was struck from behind by a car) on March 1, 2014. The other driver had liability coverage set to the minimums of what the current statutes mandate. The conferee noted his medical expenses were submitted to the Personal Injury Protection coverage extended through his own car insurance. That coverage had a limit of \$5,000 that was exhausted before all medical bills were paid. In all, the conferee incurred \$7,500 in medical expenses and further, he stated, the \$10,000 property damage coverage provided for his destroyed tractor did not begin to cover the cost. Dr. Meyer also cited a recent story from Lincoln, Nebraska, and his testimony concluded with a call for the governing bodies of the state to provide sufficient protections to its citizens ([Attachment 11](#)).

Senator Hawk was recognized by the Chairperson and inquired as to why workers' compensation or medical insurance is not paying the excess cost in the Nebraska case. The conferee stated he thought the problem could be attributed to confusion as to who is responsible for what and a lack of communication. Also, the conferee suggested, it is possibly “passing the buck.”

The Chairperson inquired, if the Legislature had doubled the limit (to \$20,000) in the 1990s, whether this amount would have covered the conferee's property damage; Dr. Meyer stated it would have. The Chairperson asked if the bodily injury limits in the law covered his

medical expenses. The conferee stated his medical bills were “eventually” covered. The Chairperson suggested, in this particular situation, the coverage seemed to be sufficient.

Senator Wilborn asked the conferee if he had purchased first party coverage on his property. The conferee indicated he was insured for purchase, but in terms of a means to recover, the replacement value did not cover the difference in market value.

Will Larson, attorney, Kansas Association of Insurance Agents (KAIA), spoke in support of the bill. He stated, as consumer protection, each state sets minimum limits for automobile coverage. These are the minimum amounts insureds must carry for bodily injury and property damage on their automobile liability policy. Minimums are intended to protect consumers in the following two ways:

- Protect the insured from carrying too little coverage and thereby finding themselves underinsured in an accident; and
- Protect others from having to bear the cost of a claim through their own insurance policy if they are injured or damaged by someone who is underinsured.

Mr. Larson also stated one of the problems is that people are shopping for insurance online and are often targeted to buy based on the lowest price rather than adequate coverage, often without fully understanding the financial risk they could be undertaking. After noting currently data does not show a correlation between minimum limits and uninsured rates, Mr. Larson stated KAIA and its member agents believe modernizing the minimum limits in Kansas, particularly increasing the property damage limits, would better reflect the realities of today’s economy and better protect Kansans from the financial impact of the underinsured motorist. Mr. Larson suggested an increase consistent with the 2015 ridesharing liability insurance limits should be considered as the move would streamline the minimum limits within the personal automobile market and provide all Kansans the same level of protection ([Attachment 12](#) and [Attachment 13](#)). |

Tim Tyner, President, Tyner Insurance Group, spoke as a proponent. Mr. Tyner noted as a licensed agent for 31 years, he, as well as other agents, sees the impact of the outdated automobile insurance coverage limits daily. He stated this law puts Kansans at risk and the risk far outweighs the costs. Mr. Tyner further suggested, by allowing the rates to remain unchanged and not address the increased medical and automobile costs, the state has shifted the cost burden away from some drivers onto others. The conferee included a premium comparison of three individuals and four separate company “quotes” with the current rate and a “modernized” rate (consistent with the “Uber” legislation) with his testimony ([Attachment 14](#) and [Attachment 15](#)).

Dustin L. DeVaughn, DeVaughn James Injury Lawyers, spoke in support of the bill. He noted the client experiences submitted as testimony. Mr. DeVaughn stated the current minimum levels do not satisfy most people’s injuries and instead shift the responsibility for payment of medical bills and expenses from the bad drivers to the injured party and to government funded health insurance programs. Mr. DeVaughn’s testimony noted many drivers do not know or realize the consequences or risks associated with maintaining minimum limits only. One such common misconception is the belief that if you have \$25,000 coverage and the underinsured “at fault” driver has \$25,000, you will get a combined coverage of \$50,000. This is not the case; under Kansas Law, the injured person with minimum limits has no underinsured coverage that they can rely upon ([Attachment 16](#)). |

The conferee concluded his testimony and responded to questions from the Committee members.

Senator Wilborn asked if there is a need to adjust the current tort threshold of \$2,000 for no fault coverage. The conferee stated an increase to the tort limit would only hurt the underprivileged and the people with little or no access to health care.

Senator Wilborn then asked if the average premium computation (increase premiums by \$3.00 for increased coverage) included an increase in the uninsured motorist (UM) insurance premiums and underinsured motorist (UIM) insurance premiums. The conferee stated UM and UIM are included in the increase because those premiums have to equal the liability limits.

Representative Hawkins asked, if someone had an accident that was their fault and they had the 25/50/10 coverage with bodily injury cost of \$50,000, would it be normal for an attorney to seek a civil action against the other driver. The conferee responded he had not been successful in pursuing amounts over the insured's limits and it would be dischargeable in bankruptcy.

Representative Kelly asked if the UBER limits would be satisfactory. The conferee stated the 50/100/25 limits are acceptable limits.

The Chairperson inquired as to whether the average \$3.00 increase was based on those with preferred rates or if they had factored in those with an accident history. The conferee did not have this information.

The Chairperson called for a brief recess at 11:00 a.m. The meeting reconvened at 11:15.

Richard James, DeVaughn James Injury Lawyers, appeared before the Committee. He stated the current limits simply shift the responsibility and accountability from the guilty party to others. This responsibility is shifted to health insurers, employers, and hospitals, and if there are no moneys, the burden is then shifted to state and federal programs. The person that chose to drive impaired or reckless should be held accountable, the conferee stated. He asked the Committee to not allow automobile insurers to continue shifting their responsibility and accountability to others.]

The conferee concluded his testimony and responded to questions from the Committee members. Mr. James addressed the question the Chairperson previously asked Mr. DeVaughn regarding individuals with an SR22 accident history (potential impact on rates). The conferee stated he had specifically addressed this issue with agents and they said the \$4.31 increase included those with an accident history. |

Andrie Krahl, MBA, Executive Director, Kansas DUI Impact Center, spoke in support of the bill. Ms. Krahl spoke to the purpose of the DUI Center, including a goal to improve the lives of those who are victimized by impaired drivers, noting that impaired driving affects all of us. Supporting a bill such as this initiates an exponentially positive residual effect on the community at large ([Attachment 17](#)).

Rodelio Gales, private citizen, Wichita, spoke as a proponent and shared about the day that changed his family's lives forever, when his young daughter was severely injured in a car accident in November 2014. Mr. Gales stated both he and his daughter were injured and just



two weeks after the accident the medical bills for his daughter exceeded \$430,000. The medical cost and care for his daughter will continue for the rest of her life. The insurance company of the at-fault driver refused to pay the claim because the accident occurred during the commission of a crime (their driver). Mr. Gales stated he had purchased a policy from Geico because they advertised lower prices. He purchased the policy online and chose the coverage that allowed him to comply with Kansas Law. Now, the health insurance through his wife's work has to pay for his daughter's medical bills and because of co-pays and the limits on the health insurance, they have had to pay large amounts of money out-of-pocket. Mr. Gales concluded, the fact that the limits are so low is unfair and has devastated his family. ([Attachment 18](#) and [Attachment 19](#)). |

There were no questions from the Committee.

Kelly Rice, private citizen, spoke as a proponent. Kelly spoke of her 18-year-old daughter that was killed by a drunk driver, telling the Committee members it was an overwhelming experience dealing with the loss of a child, making funeral arrangements, paying medical bills, and going to court for her daughter's accident. Ms. Rice stated her family was fortunate the other driver was on his parents' policy because it had a \$100,000 limit. Ms. Rice state her family also had health insurance. Even with the \$100,000 limit and health insurance, a lien was put on the money Ms. Rice's family received from the insurance company. The other driver's insurance company paid for her hospital stay and the lien was released, but then they received a letter from the insurance company saying they were recouping the money from the accident. After obtaining a lawyer, Ms. Rice's family settled with the insurance company. This experience would have been worse if the driver's family had only \$25,000 coverage of insurance ([Attachment 20](#)).

Thomas Gordon, private citizen, Kansas City, spoke as a proponent. He stated the bill is long overdue; however, he feels, as an advocate for seniors and for consumers, the language in the bill may be vague and ambiguous. He stated more people will be in compliance when there is compelling and clear language for the insurance companies to pay claims. This will assure the insurance companies will comply with Kansas Statutes concerning the obligation to report the discontinuation of automobile insurance policies ([Attachment 21](#)) .

Written testimony was submitted by the following proponents

- Sandy Braden, NAIFA Kansas ([Attachment 22](#));
- Doug Buckles, Newkirk, Dennis & Buckles, Inc. ([Attachment 23](#));
- Callie Jill Denton, Kansas Association for Justice ([Attachment 24](#));
- Mark Lowry, Heritage Insurance Group, Inc. ([Attachment 25](#));
- Bob R. Shields, PIA ([Attachment 26](#));
- Doug Smart, Smart Insurance ([Attachment 27](#));
- Scott Strong, Strong's Insurance Inc. ([Attachment 28](#));
- Darla Thornton, private citizen ([Attachment 29](#)); and
- Tommie Burton, private citizen ([Attachment 30](#)). |

After noting written proponent testimony, the Chairperson then opened the discussion for neutral parties.



## *Neutral*

Bill Sneed, State Farm Insurance, appeared before the Committee as a neutral party. He stated State Farm Insurance believes this issue is a matter of public policy and suggested an efficiently administered financial responsibility or safety responsibility law can be as effective as a compulsory or mandatory insurance law. In general, Mr. Sneed commented, State Farm Insurance's book of business is nearly all (estimated 95 percent) above the current limits. However, his remarks noted, high minimum limits can be counterproductive as they can aggravate problems of insurance affordability for some drivers and cause more uninsured drivers to be on the road. Additionally, when such limits increase, there is often an effect on jury verdicts and legal settlements. He stated one way to try to limit or stabilize such increases would be to increase the medical threshold from \$2,000 to \$2,500. Although it is impossible to predict, he believed such an increase could keep administrative cost flat, notwithstanding the increase in limits ([Attachment 31](#)).

The Chairperson opened the discussion to opponents of HB 2067.

## *Opponents*

Christine Peterson, Group Controller, Enterprise Leasing Company of Kansas, LLC (Enterprise), spoke in opposition to the bill. Ms. Peterson stated, while she appreciated the intentions of the proponents, she believed the passage of the bill would have unintended consequences with more drivers going with less coverage or without coverage at all. Further, the bill would increase Enterprise's operating costs at a time when it is already dealing with rising vehicle costs, and it would have no choice but to pass some of these costs to the customers. The increase proposed in the bill would affect more than rental car companies and their customers, Ms. Peterson continued, enactment of the bill would very likely result in more uninsured drivers on the road. Higher limits lead to higher insurance claims and, therefore, higher insurance premiums for all policyholders in Kansas. Ms. Peterson asked the Committee to consider how many Kansas policyholders would drop full and carry only the minimum coverage if insurance premiums rise. Ms. Peterson concluded her remarks noting the chart in her testimony and where Kansas would rank among states if the limits included in HB 2067 were to be enacted ([Attachment 32](#)). |

Brad Smoot, Legislative Counsel, the American Insurance Association, testified in opposition to the bill. He stated the State of Kansas has expended enormous amounts of time and effort to deal with the uninsured motorist and cited the work on verifying compliance with the current mandated minimum coverage requirements. Even with the modest minimums like those in Kansas and most other states, he continued, there are some people who cannot afford to maintain insurance coverage. Raising coverages as proposed by HB 2067 would raise premiums and individuals least able to pay would be most affected by the change. Mr. Smoot also addressed the Uninsured Motorist Rate (UMR) in Kansas and suggested individuals not driving with insurance could be the young, particularly male drivers, and accident prone drivers, and those drivers cannot afford any more coverage. Mr. Smoot also provided a chart in his testimony detailing the minimum liability limits in each state and noted the bill would move Kansas to one of the highest mandated minimums in the nation ([Attachment 33](#)).

Written testimony from opponents:

- David Monaghan, American Family ([Attachment 34](#));
- Melanie French, Key Insurance Company ([Attachment 35](#)); and

- Larrie Ann Brown, Property Casualty Insurers (PCI) ([Attachment 36](#)). |

No others were recognized to speak and the topic was closed.

The Chairperson recessed the meeting for lunch and announced the round table discussion would begin after the lunch break.

### **Afternoon Session**

#### **Roundtable Discussion—Maintaining or Amending Kansas Compulsory Automobile Liability Insurance Limits**

The meeting was called to order by the Chairperson at 1:30 p.m. Ms. Renick, KLRD, distributed documents to the Committee members and participants of the roundtable discussion ([Attachment 37](#) and [Attachment 38](#)). |

The Committee was joined by the following participants in a roundtable discussion on topics associated with the increase of minimum automobile insurance liability limits and the current requirements in law:

- Lisa Kaspar, Director of Vehicles, Kansas Department of Revenue (KDOR);
- Clark Shultz, Director of Government Affairs, Kansas Insurance Department;
- Lt. A.M. Winters, Kansas Highway Patrol;
- Representative Ramon Gonzalez, Jr.;
- Larrie Ann Brown, PCI;
- Lonny Claycamp, Insurance Planning;
- Thomas Gordon, senior advocate;
- Richard James, DeVaughn James Injury Lawyers;
- Andrie Krahl, Kansas DUI Impact Center;
- Ed Klumpp, various law enforcement associations' representative;
- David Monaghan, American Family;
- Christine Peterson, Enterprise Leasing;
- Brad Smoot, AIA;
- Bill Sneed, State Farm Insurance; and
- Tim Tyner, Tyner Insurance Group.

Following introductions of the roundtable participants, the Chairperson asked the Kansas Insurance Department representative to comment on the assigned risk pool (available to provide insurance for individuals who cannot get coverage in the private market) and associated rates. The representative stated, in general, the more people who are uninsured, the more likely some will need to obtain this coverage.

Representative Kelly inquired about changing the limits, the potential increase in premiums, and where this would put Kansas among the states. Mr. Sneed stated Kansas currently is in the bottom tier in terms of the cost of private passenger automobile coverage.

Kansas would move up the cost list, but would not go to the top. Representative Kelly asked if some states with lower limits could pay more than Kansas; Mr. Sneed stated yes, this could occur.

Representative Hawkins directed a question to the KDOR representative about the KDOR's interest in the topic and information the Director of Vehicles was hearing from other states on liability limits. Ms. Kaspar mentioned participation in the American Association of Motor Vehicle Administrators (AAMVA) and indicated members have discussed the liability limits. Ms. Kaspar mentioned the work of a task force on issues relating to real-time reporting of insurance information (both from the book of business submitted by insurance companies and at the time of an accident or law enforcement stop).

The Chairperson asked what population(s) are purchasing minimum liability insurance, noting when he sold insurance products it was the poor, the young, and persons who had a DUI history. Larrie Ann Brown cited 2012 claims information published by the Insurance Research Council and suggested some 12 percent of households would be impacted by higher rates. Richard James commented on the change being seen now with persons buying at the minimum limits in an online environment. Agents, he commented, are still encouraging persons to buy at higher limits. Representative Kelly asked if the law change would mean premium increases for the "10 percent" who do not buy above the limits. Ms. Brown replied yes. Mr. Tyner commented that the other "90 percent" would be impacted the other way, particularly in terms of a no-fault or not at fault in an accident. Mr. Smoot added if the limits are increased, the UMR will be impacted.

Senator Wilborn asked the Kansas Insurance Department representative to comment on some of the components of the Kansas Automobile Injury Reparations Act (KAIRA), specifically personal injury protection (PIP) and tort law, and where the limits should be set. Mr. Shultz indicated he would look into this further.

Senator Hawk inquired if the participants could comment on the factors that cause motorists to be uninsured. Mr. Sneed pointed to the issues of price and the young persons who are termed "silver bullets." Representative Gonzalez, Jr. addressed what occurs at the time of a law enforcement stop, noting if a driver is cited for not having insurance, it is a misdemeanor with a fine varying from \$250 to \$1,000. If the driver has been stopped and cited previously, there could be suspension or the car could be towed. At this point, the driver may be in a "cycle" (uninsured) and unable to purchase insurance. Mr. Klumpp commented, from his perspective, there are three classes of uninsured persons:

- Those with a cost issue and are typically an "average risk";
- Those who are high risk due to prior tickets and accidents; and
- The "arrogant," those who choose to ignore the risk and requirements.

He noted this last group is a very small number of those who are uninsured. Mr. Klumpp talked about the "fine line," as communities and judges must weigh the issues of the cost of insurance and the public safety concerns.

The Chairperson then asked participants to comment on whether Kansas should have one of the highest automobile liability limits in the country. Ms. Peterson commented that it should not be the highest, given the cost of living in Kansas and this higher level is not seen in other cost structures. Ms. Krahl responded, yes to the highest, noting the underage drinking levels seen among Kansas high school students (Kansas is in the top five). These students, Ms.

Krahl continued, are our next class of drivers. Representative Kelly inquired about the relationship between the level of the limits and the costs associated with automobile repair and hospitalization in Kansas *versus* other states. The Vice-chairperson spoke to his experience as the owner of an automobile body shop. The Vice-chairperson stated repair costs differ with variations not only from state-to-state, but between rural and urban areas of the state. The issues can be the cost of particular parts, including those that are after market *versus* used and the availability of parts. He also stated, another area to consider would be labor rates, which are kept “low” as this rate may be lowered to remain competitive for contract purposes (with insurance companies). Mr. Gordon stated there is no real basis to verify the correct rates for Kansas as the information could be considered subjective rather than objective, and suggested further research is needed to verify such costs (*i.e.* labor rates, parts, accident data). The Vice-chairperson stated this would be a difficult and time-consuming process, especially considering the differences from shop to shop and community to community. Mr. Claycamp added, there would need to be a break down, insurance company to company, to address the actual factors.

Mr. Gordon asked about the impact on raising the limits and if the major difference was the cost of the insurance premium. The Chairperson stated the rates would remain unchanged, the limits would be increased, and the end result would be people paying more in premiums. The Chairperson noted efforts being made to get online reporting (book of business, insurance companies provide) and electronic verification. Mr. James responded to the question on limits stating there are fixed costs such as an MRI or an ambulance trip to the hospital. Often, if the costs cannot be covered, a government payor such as Medicaid may have to pay. Mr. Claycamp stated if an individual is paying the minimum limits on bodily injury (25/50), the person will have to pay more in premiums. The numbers (data on impact of premiums) would be all over the board.

The Chairperson commented about collateral source, as an option to help deal with some of the costs of persons who drive uninsured or underinsured, and asked participants to further explain the cost “shift” to the uninsured. Mr. Smoot stated this is an interesting argument and suggested some thought be given to the population impacted by a change in the minimum limits. There is a fundamental difference, Mr. Smoot suggested, between health insurance and automobile insurance, as health insurance can be “subsidized” for lower income persons (*e.g.* Medicaid, Medicare, and the Exchange). A similar subsidy does not exist for the person buying automobile insurance. Ms. Krahl stated there are people who may be unable to afford automobile insurance, but she asked for consideration of persons the DUI Impact Center represents – those persons lives and property are impacted, as well, and those individuals could not afford to be hit by or injured by someone. Mr. Gordon stated such drivers should not be driving, noting an incident where a person drove into his home and the driver did not have proof of insurance. He also stated driving is a privilege not a right, and more work needs to be done to provide proof of insurance information to the Kansas Insurance Department and KDOR.

Representative Hawkins agreed driving is a privilege and asked the participants to think about what the proper limits should be. He noted \$10,000 for property damage is no longer adequate. He asked what would happen if the limits were increased to 50/100/25, and what the result would be if the responsibility were placed back on the driver with the insured vehicle. Representative Gonzalez, Jr. asked how long it will be before the limits are increased and how did the Legislature determine what was adequate for Uber (and ridesharing companies subject to the 2015 law). The Chairperson responded this was an issue of commercial risk and the limits reflected the increased risk. The participants discussed the adequacy of the higher limits for the rideshare companies. Mr. Tyner stated, generally, rates are proportional. Insurance companies set the rates and make adjustments for risk, as with rideshare programs. You cannot, Mr. Tyner stated, get sufficient premium to address risk. Mr. Sneed stated a vast majority are at a higher

limit than the current minimums. An issue here is an “agent’s issue,” as there is a much larger presence online that encourages purchase of lower cost policies but does not provide the information an agent in-person would likely provide to an insurance customer.

Ms. Brown was recognized to provide information on behalf of PCI regarding the financial responsibility minimums and calculation of premium costs. Ms. Brown noted, for many of the stories presented in this discussion, a limits change would not be enough. Raising the limits, she continued, is not needed to cover the costs of injuries in today’s health care market since the cost of automobile injury claims, in general, are lower than the current bodily injury (BI) limits. Based on the 2012 claims data, PCI estimates the average BI payment for 9 out of 10 injury claims in Kansas was only about \$13,400. Raising the per-person limits to \$50,000 would mean excess coverage at a higher cost for drivers with minimum limits. Additionally, the average property damage (PD) liability claim cost in Kansas is less than \$3,200 per insured vehicle; the current limit of \$10,000 per accident is more than sufficient to cover this amount. Mr. Claycamp commented the cost to increase PD from \$10,000 to \$25,000 or even to \$50,000 is inexpensive – an estimated \$1/car/6 months. The whole conversation is with BI limits. The Vice-chairperson asked Ms. Brown to clarify if \$3,200 is per vehicle or per claim. Ms. Brown stated, it was per vehicle. The Vice-chairperson noted the average PD claim could be higher, as not all damages occur in accidents.

Ms. Peterson noted some ten percent of Kansas drivers currently are uninsured. She inquired whether a change in limits would have helped the persons who testified earlier today. She also asked participants if a change in limits alone would be overlooking those who cannot afford to pay for insurance coverage today. Mr. James noted every state has a UMR, but the issue today is the underinsured; these drivers bring a cost to those who are insured. The Chairperson commented with analogy of water expanding in a balloon – where is the counter-balance to keep the balance (persons insured) with the pressures being applied. Mr. James asked how this would work if a person chose not to be insured, thereby making the balloon “unbalanced.” The Chairperson asked if \$10,000 would be better than \$0. Ms. Krahl stated the current discussion is looking at those persons who will not do it “right.” The majority of drivers will “get it right” and abide by the law. Mr. Shultz noted the comments provided by the roundtable members are stating this is a “difficult policy issue.” Kansas is in the middle compared to others states in terms of minimum limits. He indicated this issue has been grappled with by both the National Association of Insurance Commissioners and the National Conference of Insurance Legislators. In his experience with both organizations, the question has become whether is it better to have a higher number of uninsured motorists or to have a lower, reduced UMR. The experience, he suggested, has often been a higher UMR when rates are increased. Mr. Shultz noted, the Kansas Insurance Department has not taken a position on the bill but does recognize the problems associated with uninsured motorists.

Senator Wilborn asked about viewing UM/UIM coverage as one category. Mr. Tyner indicated, in general, these coverages are separated. The UIM is capped and has a lower gap between those covered and not covered. Mr. Gordon responded it is often the penalties that determine how far a person is willing to go (*i.e.* seek coverage). For example, a person may choose to buy a policy immediately following an accident before the coverage becomes more expensive. If the penalty is strengthened, he suggested, more people will buy insurance. Mr. Klumpp commented it is about a “risk” factor – not having insurance. This is a two-fold issue, getting caught coupled with the cost factors. Law enforcement has to respond to the penalty provisions in current law; the first task is to identify the driver and catch them. Then, there are SR-22 forms and follow-up that must occur and this process can become very complex.

Senator Hawk asked the insurance company representatives to comment on how the purchase of insurance has changed with the ability to buy online. Mr. Sneed stated, for State Farm Insurance as a captive agency, in terms of numbers, in the past two years, he estimates 25 to 30 percent of its policies are “sold” online. He indicated this is where most of the minimum-only coverage is being purchased and although the policy is sold without direct agent interaction, the policyholder is assigned to a local agent for follow-up. Mr. Gordon commented, without the agent and some of the administrative costs, this could result in a lower premium. Representative Hawkins noted, in this instance, there is a difference as the policy and its maintenance is transferred to an agent. Mr. Sneed agreed the “cost of insurance” would vary from State Farm Insurance to the more “virtual” insurance companies like All-State and Progressive.

The Chairperson asked participants to comment on whether the law should allow for a lower limit for persons who are able to demonstrate financial hardship. Mr. Gordon stated a solution would be to hold an insurance company liable if it fails to report a lapse of its driver’s insurance coverage. The Chairperson indicated this might be possible if the system of receiving and reporting insurance information to law enforcement and other officials was updated. The Vice-chairperson commented on the Legislature’s study of uninsured motorists and electronic verification of proof of automobile insurance, including a 2011 interim study and work by a task force that met over three interim sessions. He asked what policymakers should consider as priority – increasing the reporting requirements or the enforcement of the law, given the trooper shortages at the Kansas Highway Patrol, for example. The Vice-chairperson also asked if the State should direct locals to pick up the notification and enforcement and at what cost. The cost to the Kansas Department of Transportation also was referenced – property damage to guardrails, signs, and other traffic control. The Vice-chairperson concluded his comments on the issue, sharing his own account of loss associated with a motor vehicle accident and indicated it may not be possible to raise BI high enough to address health care costs.

At 2:55 p.m., the Chairperson thanked all of the participants and called for a brief break.

### **Committee Discussion on Assigned Topics; Consideration of Recommendations for the Committee Report to the 2016 Legislature**

*Study the Need to Increase the Minimum Motor Vehicle Liability Insurance Policy Limits and, If Needed, What Limits Would be Indicated.*

The Chairperson called the meeting to order at 3:05 p.m. and asked the Committee members to turn their attention to the topic of the minimum automobile liability insurance limits. He asked the Committee members to discuss and present possible motions on either BI/aggregate BI or PD.

*Representative Hawkins moved to include a \$60,000 single limit to BI and PD. Representative Kelly seconded the motion. Senator Wilborn stated, for private passenger automobiles, the single limit would be considered unconventional. Representative Hawkins asked to amend his motion, making the aggregate limit \$75,000.* Discussion followed with the Vice-chairperson inquiring how the aggregate limit would be distributed in the event where both BI and PD compensation would be indicated. Both the Chairperson and the maker of the motion commented on commercial insurance and the inclusion of single limits, including umbrella policies. Senator Wilborn noted the tort threshold needs to be considered. He asked if the motion addresses UM/UIM coverage, noting that not having a separate PD limit could create

problems as the coverages and law are meant to be uniform. *The motion was closed and with the agreement of the second; the motion was withdrawn.*

*Representative Hawkins moved to increase the PD limit from \$10,000 to \$25,000 [upon a request for clarification by Committee staff, the motion included the introduction of a Special Committee bill]. Representative Kelly seconded the motion. Committee discussion followed, with Representative Kelly inquiring if there is any precedent to tie an increase in the limit to a CPI-multiplier (Consumer Price Index). The Chairperson suggested a sunset might achieve the same result. The Vice-chairperson indicated it is difficult to index, and there could be issues with allowing this provision to sunset. With no further discussion, Representative Hawkins closed the motion. The motion carried.*

*The Vice-chairperson noted the issues of uninsured and underinsured motorists include determination of penalties and consequences for drivers and requested the Committee Report be distributed to Judiciary committees' leadership. Representative Kelly seconded the motion. The motion carried.*

#### *Review Pharmacy Benefits Management Legislation*

The Chairperson then invited comment on the remaining topic before the Special Committee. The Vice-chairperson expressed his appreciation for the hard work and compromise efforts by the PBMs and the pharmacists. *The Vice-chairperson moved to recommend the insurance committees of the Senate and House take up 2015 SB 103 or a compromise replacement bill early in the 2016 Session. Representative Hawkins seconded the motion. The Chairperson commended the parties for their good faith negotiations on this topic. The Vice-chairperson indicated the bill and its discussion could start in the Senate and closed the motion. The motion carried.*

The meeting was adjourned at 3:18 p.m.

Prepared by Diane Brian and Melissa Renick  
Edited by Melissa Renick

Approved by the Committee on:

February 10, 2016

(Date)