

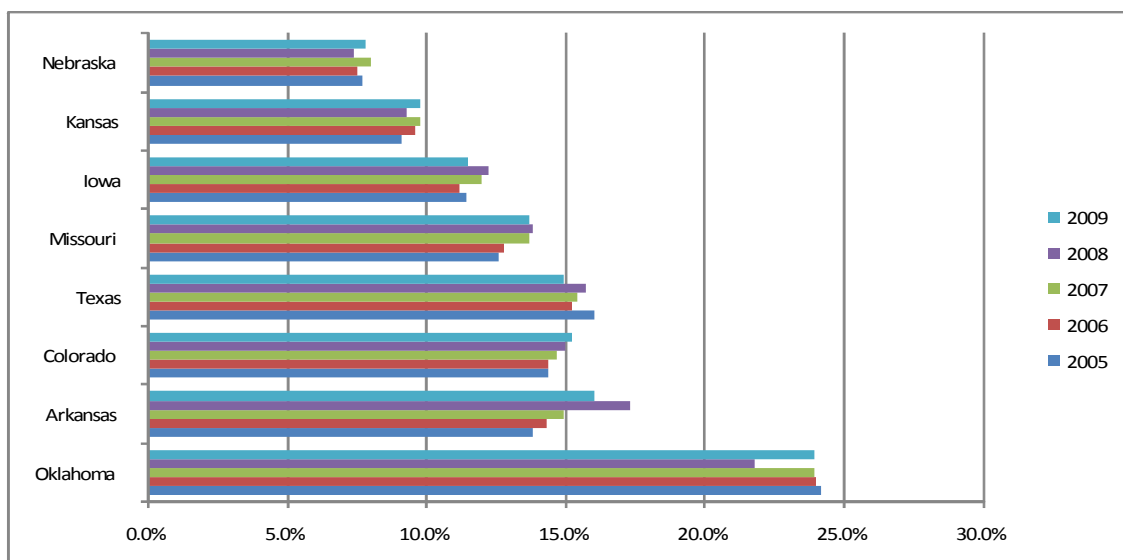
Uninsured Motorists: Basic Questions and Answers

What does “uninsured” mean when speaking of uninsured motorists? Kansas law requires that a vehicle operated on state highways be insured. Criteria differ from state to state, but in general the term “uninsured motorist” is applied to these groups:

- Motorists without insurance driving uninsured vehicles;
- Motorists with insurance driving uninsured vehicles;
- Motorists driving with insurance, but denied coverage;
- Motorists whose insurance carrier has become insolvent; and
- Unknown motorists who cause crashes, regardless of insurance (hit and run).

How many motorists are uninsured? No one knows for certain, in any state, and the answers depend on how the rate is measured. Cross-checking between records of insured vehicles and records of registered vehicles is one method, but that rate will not include vehicles that are not registered. The Insurance Research Council (IRC) annually releases a rate that is based on uninsured motorist and bodily injury insurance claims. The graph below shows trends for Kansas and nearby states.

Rates of Uninsured Motorists, Kansas and Nearby States, 2005-2009



Sources: “Uninsured Motorists,” 2008 and 2011 Editions, Insurance Research Council

The IRC states that a 1 percent change in the unemployment rate, up or down, changed the uninsured motorist rate by 0.75 percent.

What does Kansas law say about motor vehicle insurance? Kansas is among 49 states that require vehicles operated on public roadways to be insured, and the 50th state (Vermont) requires “financial responsibility.”

- A vehicle must be insured. A vehicle must be insured before it can be registered and the owner must “maintain financial security continuously throughout the period of registration.” (KSA 2010 Supp. 40-3118)
- Proof must be provided. A driver must show proof of financial security in the event of a crash (KSA 8-1604(a)) and at any time requested by a law enforcement officer

(KSA 2010 Supp. 40-3104(d)). Also, the Director of Vehicles (at the Department of Revenue) is authorized to require a vehicle owner or the owner's insurance company to provide records proving the continuous coverage. Kansas law allows coverage to be proven at registration with various types of documents and, since 2001, on-line or electronically; since 2004, the Insurance Commissioner has been authorized to require companies to provide electronic verification. (KSA 8-173(d)).

- Punishments include fines, jail time, and suspension or revocation of a driver's license, vehicle registration, or both. In addition to fines of \$300 to \$1,000 for a first violation and \$800 to \$2,500 for a subsequent conviction within three years, a violator can be jailed for not more than six months. The Director of Vehicles may suspend a vehicle's registration and its owner's license when the Director has *prima facie* evidence that continuous financial security was not maintained. The reinstatement fee is \$100 (\$300 if a subsequent violation within one year). (KSA 2010 Supp. 40-3104, 40-3118) (For registration purposes, the Director may verify insurance coverage on-line or electronically. [KSA 8-173(d)]) In addition, under the terms of 2011 SB 136 (Session Laws Ch. 59), an uninsured motorist operating a vehicle involved in a crash may not collect certain noneconomic damages (“no pay, no play”).

How can a state deter motorists from driving vehicles that are not insured?

Research suggests states have taken combinations of three approaches:

- Create a culture of having insurance. While not all factors that create such a culture are known, researchers say there appear to be links to consistent enforcement.
- Make insurance more affordable. Approaches include the New Jersey “Basic” policy and California's eligibility-restricted Low Cost Automobile Insurance Program.
- Punish those who have been found to have no insurance. However, researchers have not found a direct correlation between strict statutes and lower rates of uninsured motorists.

How can insurance coverage be verified electronically? Approaches to electronic verification use one or both of two main approaches: (1) the state creates and maintains a database or (2) the state checks against insurance companies' data. Under either scenario, the state usually is assisted by a vendor to use the data to determine whether a vehicle is insured. The state registration database, which contains information such as the vehicle identification number (VIN) and the owner's name, is the link between the license plate number entered by a law enforcement officer, Division of Vehicles employee, or court employee and the information about the vehicle. Each approach has its advantages and disadvantages, and some states (such as California and Texas) use combinations.

- If a state maintains a database (an approach in use for many years), all the data is in a single place and in a single format, and coverage will be listed regardless of whether the insured has changed companies. However, data lag company records, and there are no national standards. The state has responsibility for proprietary data. Together, HDI Solutions, Inc., and Insure-Rite, Inc., provide services of this type in states including Utah and Texas.
- The Insurance Industry Committee on Motor Vehicle Administration (IICMVA) has established standards for on-line verification of insurance company records. Data are as current as a company's files, and the company retains its data. MV Verisol is a leading company in on-line verification using the IICMVA model; it gave a presentation to various committees during the 2010 Legislative Session. The

company says 11 states have adopted this model, but such a system does not appear to be fully functional in any state yet.

What priorities for an electronic verification system already have been determined for Kansas? In its third-year report, to the 2009 Legislature, Kansas' Electronic Motor Vehicle Financial Security Verification Task Force cited four goals to serve as the framework for addressing electronic real-time verification:

- Assist the Director of Motor Vehicles and county treasurers in registration of motor vehicles in compliance with motor vehicle financial security law;
- Provide law enforcement officers with roadside information during traffic stops to determine whether vehicles are in compliance with motor vehicle financial security law;
- Provide greater assurance to the motoring public that other vehicles on the road are insured as required by law; and
- Offer convenient insurance policy interface and reporting for companies required to provide insurance policy information to the state.

A representative of the Kansas Department of Insurance, also representing representatives of the Department of Revenue, also suggested twelve requirements for the system design. Those suggestions included access to information nationwide, not just for vehicles registered in Kansas; a system that is easily, reliably and accurately accessible from a patrol car and from fixed locations; and compatibility with nearly all state and insurance company systems. The suggested requirements also included that a new system be established legislatively. "Real-time" is not defined consistently, but IICMVA standards require a participating insurance company to reply within five seconds and make data available at all times.

How will one know whether an action the state takes reduces the rate of uninsured vehicles? Measured rates would decrease. The rates measured could include the rate of registered vehicles for which insurance cannot be confirmed and the IRC-determined rate (based on claims). Also, violations for no insurance would decrease. The following table shows trends in violations related to no vehicle insurance from data kept by the Division of Vehicles.

Violation	2004	2005	2006	2007	2008	2009	2010
Conviction for No Insurance	15,974	15,908	14,247	24,189	13,530	13,093	13,569
Warning Notice - Accident, No Insurance			6,943	6,497	6,571	4,867	7,058
Suspension Notice - Accident, No Insurance	4,000	7,369	4,318	4,243	4,027	3,236	4,619
Warning Notice - Fail to File/Lapse			25,896	32,643	29,563	25,678	27,630
Suspension Notice - Fail to File/Lapse	21,733	38,888	23,543	27,362	25,420	22,032	24,502
Insurance Verification received from Courts and Law Enforcem	110,401	119,714	128,420	110,652	103,924	114,593	141,406
Evidence of Insurance Filings (SR 22 forms)	69,746	77,351	87,891	80,642	82,687	71,759	65,847
Evidence of insurance cancelled (SR 26 forms)	33,842	33,142	36,447	36,580	41,504	35,742	35,012
Source: Kansas Department of Revenue. 2004 and 2005 statistics from testimony presented on SB 322, January 19, 2006; later statistics received directly from the agency.							
The Director of Vehicles noted that a spike in "Suspension Notice" in 2005 was caused by an effort to reduce a backlog at that time.							

UNINSURED MOTORIST LEGISLATION

2005-2006

- **2005 HB 2305.** The bill would have amended KSA 40-284, which deals with uninsured motorist coverage and underinsured motorists and liability protections. The bill would have removed the language that the insured may recover what the uninsured/underinsured motorist coverage exceeds in the bodily injury coverage of the other motorist. The language would have instead allowed the recovery to be to the limits of the amount of liability actually available to the injured insured. (Recommended by House Committee; failed on an HCOW vote.)
- **SB 321.** The bill would have required a real-time, online insurance verification system bill with an implementation deadline (January 1, 2008) for the Kansas Department of Revenue.
- **SB 322.** The bill was the first 2006 legislative review of the penalties under the Kansas Automobile Injury Reparations Act (KAIRA). Among provisions of the bill, as introduced, was the proposed amendment that a third offense of a motorist being uninsured would result in a felony charge (currently there is no specific penalty for a third offense). The bill also increased fines. Senate Committee amendments added the contents of **Sub. for HB 2690**. Discussion of both SB 321 and SB 322 led to the introduction of SCR 1619.
- **SCR 1619.** This resolution called for a task force study of an electronic verification system (online insurance database system for verification of proof of insurance). The 17-member task force was composed of insurance company representatives, legislators, and agency officials. The task force was to report its recommendations and conclusions on the feasibility of such system to the Legislature no later than the commencement of the 2007 Session. **[ENACTED]**
 - The Legislature again considered proposals to address uninsured motorists and amendments to current procedures and penalties. The resolutions reauthorizing the Electronic Motor Vehicle Financial Security Verification System Task Force, **2007 SCR 1603** and **2008 SCR 1616**, were enacted into law.
- **Sub. for HB 2690.** The bill addressed resuspension and revocation of drivers' licenses. The language was placed into SB 322, after it was approved by the Senate Committee on Financial Institutions and Insurance, and then placed in Senate Sub. for HB 2366. The conference report for Senate Sub. for HB 2366 was adopted by the first house. No action was taken by the second house. Sub. for HB 2690 previously had been incorporated, as a floor amendment, into HB 2938.

The language that passed through HB 2690-SB 322 and HB 2690-HB 2938 was placed into **Sub. for HB 2706** (conference report) which passed the Legislature. However, the proposed penalties (fine increases, third offense felony, imprisonment) were not enacted by the 2006 Legislature. **[ENACTED]**

- **HB 2755.** This bill was introduced by the House Insurance Committee during the 2006 Session, but did not have a hearing. The bill incorporated the language from 2005 HB 2305 (right to recovery).

2007-2008

- **SB 615.** The bill, as amended by the Senate Committee of the Whole, would have amended KAIRA to:
 - Require that a prosecution for permitting an uninsured motor vehicle to be operated on a highway, or failure to provide proof of financial security, be stayed if evidence of financial security is presented to the court, unless there is a request from the defense attorney to set the matter for trial;
 - Require that if the Department of Revenue indicates the insurance was not in force on the date in question, the Department would be required to deliver a certified copy to any defense attorney;
 - Require that all criminal proceedings would be stayed and eventually dismissed, if the person whose license is suspended or revoked and who is involved in an accident, enters into an agreement with any driver or driver's insurer to pay for such damage and fulfills the agreement within 12 months;
 - Require that all criminal proceedings would be reinstated if the person whose license is suspended or revoked and who is involved in an accident, enters into an agreement with any driver or driver's insurer to pay for such damage and defaults on the agreement;
 - Authorize a court to order that a convicted person's motor vehicle be impounded or immobilized for up to 30 days for failure to maintain financial security or liability insurance (see 2008 HB 2867);
 - Prohibit the owner of a motor vehicle from recovering the first \$5,000 of property damage to his or her motor vehicle if the owner failed to maintain financial security on the vehicle;
 - Exempt a lienholder from the prohibition from recovering for property damage to a motor vehicle; and
 - Require that any moneys not paid by insurance companies to the uninsured motorist would be required to be paid to the Attorney General for deposit into the Crime Victims Compensation Fund. (Adopted by Senate; Hearing in House Committee; died in Committee)
- **HB 2378.** The bill would have amended KAIRA to prohibit a vehicle owner from recovering property damage to the owner's vehicle if the owner did not have insurance and was involved in an accident with an insured vehicle. In situations where the accident was the fault of the insured driver, recovery of property damage would have been prohibited for the uninsured vehicle. (2007 Committee hearing; died in Committee)

- **HB 2867.** The bill would have amended KAIRA to provide that the court, in addition to other penalties specified in current law, may order the convicted person's vehicle be impounded or immobilized up to 30 days for the failure to have or maintain financial security. The vehicle owner would be responsible for towing, impoundment, and storage fees. The court would have been required to consider, prior to impoundment, whether the impoundment would result in the loss of employment of the convicted person or member of the person's family or whether the owner or family member would be impaired from attending school or obtaining medical care. Provisions also were made for personal property retrieval and lease vehicles. (Introduced in 2008, died in Committee).

2009-2010

- **H. Sub. for SB 260** would have required the Secretary of Revenue, in consultation with the Insurance Commissioner, to implement a motor vehicle financial security verification and compliance system by March 1, 2011. The system, among other things, would have been required to utilize data reported by insurers and send requests to insurers for verification of insurance via services established by the insurers with enhancements, additions, and modification as required by the state agencies. The bill also would have required the Department of Revenue, after the system was operational for two years, to report to the Legislature regarding the benefits and costs of the verification system to the State, insurers, and the public and the effectiveness of the program [system] in reducing the number of uninsured motor vehicles. The substitute bill died on general orders in the House. **SB 260**, as amended by Senate Committee of the Whole, would have provided that anyone operating an uninsured vehicle who, at the time of auto accident, had not maintained personal injury protection (PIP) benefits coverage is prohibited from having a cause of action for non-economic loss. This provision would not have applied to persons who failed to maintain coverage for a period of 30 days or less and had maintained continuous coverage for at least one year prior to this coverage lapse. The bill also would have barred persons convicted of, or having pled guilty to, an alcohol or drug-related violation in connection with an auto accident from this recovery.
- **SB 392** and **HB 2474**, as introduced, were nearly identical bills directing the Secretary of Revenue, in consultation with the Insurance Commissioner, to develop and implement an on-line motor vehicle and financial security verification system. The bills did not specify the type of system to be utilized and instead required the Secretary to select and enter into a contract with a third party contractor to develop, implement, operate, and maintain the system. Insurance companies would have been required to submit policy information to this contractor on a daily basis. There was no committee action on SB 392; HB 2474 was modified by the House Committee on Insurance and recommended as H. Sub. for SB 260 (described above).
- **SCR 1631**, as amended by the Senate Committee of the Whole, would have reactivated the task force created by 2008 SCR 1616 to study the design and implementation of an electronic motor vehicle financial security verification system. The bill passed the Senate and was referred to House Committee. The bill died in committee.

2011-2012

- **SB 136.** The bill provided that anyone operating an uninsured vehicle who, at the time of auto accident, had not maintained personal injury protection (PIP) benefits coverage is prohibited from having a cause of action for non-economic loss (see 2009 SB 260, as amended by SCOW). Amended by House Committee, the bill specified that this prohibition would not apply if the court finds that the person did not knowingly drive a motor vehicle that was without PIP coverage. **[ENACTED]**
- **HB 2291.** The bill would amend KSA 40-284 to extend underinsured motorist coverage to “any occupant of the insured vehicle or their heirs at law.” Additionally, these individuals would be permitted to recover from the owner or operator another vehicle the same limits of the policy as are available to the owner of the vehicle they are occupying. Current law pertains only to the policyholder (does not address the vehicle's occupants). The bill was referred to the House Committee on Insurance. No action, to date, has been taken on this matter.

KLRD, September 2011. More detail on this topic is available in the article “Uninsured Motorists: Questions and Answers for States” available through the KLRD website, under “Capitol Ideas,” then “Transportation.” Additional data with that article include IRC rates for all states.