

SESSION OF 2011

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 136**

As Amended by House Committee on Insurance

**Brief\***

SB 136, as amended, would enact new law to provide that anyone operating an uninsured vehicle who, at the time of an auto accident, has not maintained personal injury protection benefits coverage as mandated by current law (the Kansas Automobile Injury Reparations Act) would be prohibited from having a cause of action for the recovery of non-economic loss sustained as a result of the accident.

The prohibition from having a cause of action for non-economic loss would not apply and a cause of action for non-economic loss could be maintained if the court finds by clear and convincing evidence that the person bringing the cause of action did not knowingly, at the time of the accident, drive a motor vehicle that was without personal injury protection benefits coverage as mandated by the current law.

The prohibition from having a cause of action for non-economic loss also would not apply to any person who, at the time of the accident, failed to maintain coverage for a period of forty-five days or less and had maintained continuous coverage for at least one year prior to such failure to maintain coverage.

Additionally, the bill would provide that any person who is convicted of, or pleads guilty to, an alcohol or drug-related violation in connection with an auto accident also would be prohibited from this recovery. The violations referenced in the bill would include the suspension and restriction of driving privileges for test refusal, test failure or drug-related

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

conviction (KSA 8-1014) and driving under the influence (DUI) of alcohol or drugs (KSA 8-1567).

Personal injury protection benefits are defined in current law to mean the disability benefits, funeral benefits, medical benefits, rehabilitation benefits, substitution benefits and survivors' benefits required to be provided in motor vehicle liability insurance policies pursuant to this act. Economic damages generally would include the cost of medical care, past and future, and related benefits, including lost wages, loss of earning capacity and other such losses; non-economic losses would include claims for pain and suffering, mental anguish, injury and disfigurement not affecting earning capacity, and other losses which cannot easily be expressed in monetary terms.

## **Background**

The bill was introduced at the request of Farmers Insurance. Proponents of the bill submitting testimony at the Senate Committee hearing included representatives of: the Farmers Insurance Group; the Kansas Property and Casualty Insurance Companies (KAPCIC); and the Property and Casualty Insurance Association of America (PCI). Written testimony in support of the bill also was provided by the American Insurance Association and the State Farm Insurance Companies. Proponents of the bill testified that this legislation, often termed as "No Pay, No Play," would limit uninsured drivers to recovering only their economic damages against the at-fault driver. Eight states, according to one proponent, have adopted some form of "No Pay, No Play" and more than 20 have proposed similar laws. The proponents noted the conclusions and recommendations of the 2008 Interim Electronic Motor Vehicle Financial Security Verification System Task Force recommended support for "No Pay, No Play" legislation. A similar bill, 2009 SB 260 (SB 136 is identical to the Senate Committee of the Whole version), passed the Senate in 2009, but was not advanced by the House.

An attorney from Topeka representing the Kansas Association for Justice appeared in opposition to the bill at the Senate Committee hearing. The attorney stated that the bill eliminates a legal right to seek recovery of non-economic loss in court, no matter how serious the injuries, or how negligent or wrongful the other driver was in causing the accident. The attorney further stated that mandatory auto insurance coverage laws are sound public policy and that the bill does not fix the real problem: inadequate, ineffective uninsured/underinsured motorist coverage (UM/UIM).

The House Committee on Insurance amendments:

- Increase the time period specified for a lapse of coverage not subject to the prohibition from the right to recovery of non-economic loss from 30 to 45 days; and
- Provide a legal remedy from the prohibition from a cause of action for recovery of non-economic loss for a person who did not knowingly drive a motor vehicle that was without personal injury protection benefits coverage as is required by law.

The fiscal note prepared by the Division of the Budget on the original bill states that the Kansas Insurance Department indicates that passage of the the bill would have no fiscal effect on its operations.