

HOUSE BILL No. 2104

By Committee on Insurance

1-19

1 AN ACT concerning insurance; relating to motor vehicle liability
2 insurance; uninsured motorist coverage and underinsured motorist
3 coverage; increasing the minimum policy limit for bodily injury;
4 amending K.S.A. 40-284 and K.S.A. 2016 Supp. 40-3107 and repealing
5 the existing sections.
6

7 WHEREAS, The amendments to K.S.A. 40-284 and K.S.A. 2016 Supp.
8 40-3107 by this act shall be known and may be cited as the injured
9 motorist fair compensation act.

10 Now, therefore:

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 40-284 is hereby amended to read as follows: 40-
13 284. (a) No automobile liability insurance policy covering liability arising
14 out of the ownership, maintenance, or use of any motor vehicle shall be
15 *renewed*, delivered or issued for delivery in this state *on or after January*
16 *1, 2018*, with respect to any motor vehicle registered or principally
17 garaged in this state, unless the policy contains or has endorsed thereon, a
18 provision with coverage limits equal to the limits of liability coverage for
19 bodily injury or death in such automobile liability insurance policy sold to
20 the named insured for payment of part or all sums which the insured or the
21 insured's legal representative shall be legally entitled to recover as
22 damages from the uninsured owner or operator of a motor vehicle because
23 of bodily injury, sickness or disease, including death, resulting therefrom,
24 sustained by the insured, caused by accident and arising out of ownership,
25 maintenance or use of such motor vehicle, or providing for such payment
26 irrespective of legal liability of the insured or any other person or
27 organization. No insurer shall be required to offer, provide or make
28 available coverage conforming to this section in connection with any
29 excess policy, umbrella policy or any other policy which does not provide
30 primary motor vehicle insurance for liabilities arising out of the
31 ownership, maintenance, operation or use of a specifically insured motor
32 vehicle.

33 (b) Any uninsured motorist coverage shall include an underinsured
34 motorist provision *with coverage limits equal to the limits of liability*
35 *provided by such uninsured motorist coverage* which enables the insured
36 or the insured's legal representative to recover from the insurer the amount

1 of damages for bodily injury or death to which the insured is legally
2 entitled from the owner or operator of another motor vehicle ~~with coverage~~
3 ~~limits equal to the limits of liability provided by such uninsured motorist~~
4 ~~coverage~~ to the extent such ~~coverage exceeds~~ *damages exceed* the limits of
5 the bodily injury coverage carried by the owner or operator of the other
6 motor vehicle. *In no event shall the amount of available underinsured*
7 *motorist coverage be reduced because of any payment by or on behalf of*
8 *the owner or operator of the other motor vehicle or any third party.*

9 (c) The insured named in the policy shall have the right to reject, in
10 writing, the uninsured motorist coverage required by subsections (a) and
11 (b) which is in excess of the limits for bodily injury or death set forth in
12 K.S.A. 40-3107, and amendments thereto. A rejection by an insured named
13 in the policy of the uninsured motorist coverage shall be a rejection on
14 behalf of all parties insured by the policy. Unless the insured named in the
15 policy requests such coverage in writing, such coverage need not be
16 provided in any subsequent policy issued by the same insurer for motor
17 vehicles owned by the named insured, including, but not limited to,
18 supplemental, renewal, reinstated, transferred or substitute policies where
19 the named insured had rejected the coverage in connection with a policy
20 previously issued to the insured by the same insurer.

21 (d) Coverage under the policy shall be limited to the extent that the
22 total limits available cannot exceed the highest limits of any single
23 applicable policy, regardless of the number of policies involved, persons
24 covered, claims made, vehicles or premiums shown on the policy or
25 premiums paid or vehicles involved in an accident.

26 (e) Any insurer may provide for the exclusion or limitation of
27 coverage:

28 (1) When the insured is occupying or struck by an uninsured
29 automobile or trailer owned or provided for the insured's regular use;

30 (2) when the uninsured automobile is owned by a self-insurer or any
31 governmental entity;

32 (3) when there is no evidence of physical contact with the uninsured
33 motor vehicle and when there is no reliable competent evidence to prove
34 the facts of the accident from a disinterested witness not making claim
35 under the policy;

36 (4) to the extent that workers' compensation benefits apply;

37 (5) when suit is filed against the uninsured motorist without notice to
38 the insurance carrier; and

39 (6) to the extent that personal injury protection benefits apply.

40 (f) An underinsured motorist coverage insurer shall have subrogation
41 rights under the provisions of K.S.A. 40-287, and amendments thereto. If a
42 tentative agreement to settle for liability limits has been reached with an
43 underinsured tortfeasor, written notice must be given by certified mail to

1 the underinsured motorist coverage insurer by its insured. Such written
2 notice shall include written documentation of pecuniary losses incurred,
3 including copies of all medical bills and written authorization or a court
4 order to obtain reports from all employers and medical providers. Within
5 60 days of receipt of this written notice, the underinsured motorist
6 coverage insurer may substitute its payment to the insured for the tentative
7 settlement amount. The underinsured motorist coverage insurer is then
8 subrogated to the insured's right of recovery to the extent of such payment
9 and any settlement under the underinsured motorist coverage. If the
10 underinsured motorist coverage insurer fails to pay the insured the amount
11 of the tentative tort settlement within 60 days, the underinsured motorist
12 coverage insurer has no right of subrogation for any amount paid under the
13 underinsured motorist coverage.

14 Sec. 2. K.S.A. 2016 Supp. 40-3107 is hereby amended to read as
15 follows: 40-3107. Every policy of motor vehicle liability insurance issued
16 or renewed on or after January 1, ~~2017~~ 2018, by an insurer to an owner
17 residing in this state shall:

18 (a) Designate by explicit description or by appropriate reference of all
19 vehicles with respect to which coverage is to be granted;

20 (b) insure the person named and any other person, as insured, using
21 any such vehicle with the expressed or implied consent of such named
22 insured, against loss from the liability imposed by law for damages arising
23 out of the ownership, maintenance or use of any such vehicle within the
24 United States of America or the Dominion of Canada, subject to the limits
25 stated in such policy;

26 (c) state the name and address of the named insured, the coverage
27 afforded by the policy, the premium charged and the policy period;

28 (d) contain an agreement or be endorsed that insurance is provided in
29 accordance with the coverage required by this act;

30 (e) contain stated limits of liability, exclusive of interest and costs,
31 with respect to each vehicle for which coverage is granted, not less than
32 ~~\$25,000~~ \$50,000 because of bodily injury to, or death of, one person in
33 any one accident and, subject to the limit for one person, to a limit of not
34 less than ~~\$50,000~~ \$100,000 because of bodily injury to, or death of, two or
35 more persons in any one accident, and to a limit of not less than \$25,000
36 because of harm to or destruction of property of others in any one
37 accident;

38 (f) include personal injury protection benefits to the named insured,
39 relatives residing in the same household, persons operating the insured
40 motor vehicle, passengers in such motor vehicle and other persons struck
41 by such motor vehicle and suffering bodily injury while not an occupant of
42 a motor vehicle, not exceeding the limits prescribed for each of such
43 benefits, for loss sustained by any such person as a result of injury. The

1 owner of a motorcycle, as defined by K.S.A. 8-1438, and amendments
2 thereto, or motor-driven cycle, defined by K.S.A. 8-1439, and amendments
3 thereto, who is the named insured, shall have the right to reject in writing
4 insurance coverage including such benefits for injury to a person which
5 occurs while the named insured is operating or is a passenger on such
6 motorcycle or motor-driven cycle; and unless the named insured requests
7 such coverage in writing, such coverage need not be provided in or
8 supplemental to a renewal policy when the named insured has rejected the
9 coverage in connection with a policy previously issued by the same
10 insurer. The fact that the insured has rejected such coverage shall not cause
11 such motorcycle or motor-driven cycle to be an uninsured motor vehicle;

12 (g) notwithstanding any omitted or inconsistent language, any
13 contract of insurance which an insurer represents as or which purports to
14 be a motor vehicle liability insurance policy meeting the requirements of
15 this act shall be construed to obligate the insurer to meet all the mandatory
16 requirements and obligations of this act;

17 (h) notwithstanding any other provision contained in this section, any
18 insurer may exclude coverage required by subsections (a), (b), (c) and (d)
19 of this section while any insured vehicles are:

20 (1) Rented to others or used to carry persons for a charge, however,
21 such exclusion shall not apply to the use of a private passenger car on a
22 share the expense basis; or

23 (2) being repaired, serviced or used by any person employed or
24 engaged in any way in the automobile business. This does not apply to the
25 named insured, spouse or relative residents; or the agents, employers,
26 employees or partners of the named insured, spouse or resident relative;
27 and

28 (i) in addition to the provisions of subsection (h) and notwithstanding
29 any other provision contained in subsections (a), (b), (c) and (d) of this
30 section, any insurer may exclude coverage:

31 (1) For any damages for which the United States government might
32 be liable for the insured's use of the vehicle;

33 (2) for any damages to property owned by, rented to, or in charge of
34 or transported by an insured, however, this exclusion shall not apply to
35 coverage for a rented residence or rented private garage;

36 (3) for any obligation of an insured, or the insured's insurer under any
37 type of workers' compensation or disability or similar law;

38 (4) for liability assumed by an insured under any contract or
39 agreement;

40 (5) if two or more vehicle liability policies apply to the same
41 accident, the total limits of liability under all such policies shall not exceed
42 that of the policy with the highest limit of liability;

43 (6) for any damages arising from an intentional act;

1 (7) for any damages to any person who would be covered for such
2 damages under a nuclear energy liability policy;

3 (8) for any obligation of the insured to indemnify another for
4 damages resulting from bodily injury to the insured's employee by
5 accident arising out of and in the course of such employee's employment;

6 (9) for bodily injury to any fellow employee of the insured arising out
7 of and in the course of such employee's employment;

8 (10) for bodily injury or property damage resulting from the handling
9 of property:

10 (A) Before it is moved from the place where it is accepted by the
11 insured for movement into or onto the covered auto; or

12 (B) after it is moved from the covered auto to the place where it is
13 finally delivered by the insured;

14 (11) for bodily injury or property damage resulting from the
15 movement of property by a mechanical device, other than a hand truck, not
16 attached to the covered auto; and

17 (12) for bodily injury or property damage caused by the dumping,
18 discharge or escape of irritants, pollutants or contaminants; however, this
19 exclusion does not apply if the discharge is sudden and accidental.

20 (j) Commencing with the 2026 legislative interim period, and at least
21 every 10 years thereafter, subject to authorization by the legislative
22 coordinating council, a legislative interim study committee shall study the
23 issue of whether the minimum limits of liability in subsection (e) should
24 be adjusted.

25 Sec. 3. K.S.A. 40-284 and K.S.A. 2016 Supp. 40-3107 are hereby
26 repealed.

27 Sec. 4. This act shall take effect and be in force from and after
28 January 1, 2018, and its publication in the statute book.