

Committee Reports to the 2009 Kansas Legislature



Supplement

**Kansas Legislative Research Department
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**Report of the
Electronic Motor Vehicle Financial Security
Verification System Task Force
to the
2009 Kansas Legislature**

CHAIRPERSON: Insurance Commissioner Sandy Praeger

VICE-CHAIRPERSON: Representative Delia Garcia

LEGISLATIVE MEMBERS: Senators Ruth Teichman and Anthony Hensley; and Representative Virgil Peck

NON-LEGISLATIVE MEMBERS: Consumer Interests representative, Gavin Wittman, Educational Credit Union, Topeka, Kansas; Law Enforcement representative, Major Mark Bruce, Kansas Highway Patrol, Topeka, Kansas; Law Enforcement representative, Jerry Little, Lawrence City Prosecutor, Lawrence, Kansas; Department of Revenue representative, Tim Blevins, CIO, Department of Revenue, Topeka, Kansas; Division of Motor Vehicles representative, Carmen Alldritt, Director of Motor Vehicles, Topeka, Kansas; KAIFA representative, Jean Curry, Shelter Insurance Company, Salina Kansas; KAIA representative, Doug Buckles, Newkirk, Dennis, and Buckles, Independence, Kansas; NAMIC representative, George Cooper, State Farm, Bloomington, Illinois; AIA representative, Ginny Boyles, ACE-INA Group, Philadelphia, Pennsylvania; KAPCIC, foreign company, Tony Kimmi, Farm Bureau, Manhattan, Kansas; KAPCIC, domestic company, Brad Miller, Farmers Alliance, McPherson, Kansas; PCI representative, Alex Hageli, PCI, Des Plaines, Illinois; Top 6 Auto Insurance Writers in Kansas, Lee Wright, Farmers Insurance Group, Overland Park, Kansas; Insurance Department representative, Commissioner Sandy Praeger, Topeka, Kansas

Electronic Motor Vehicle Financial Security Verification System Task Force

RESPONSE TO UNINSURED MOTORISTS—THIRD YEAR REPORT

CONCLUSIONS AND RECOMMENDATIONS:

The Task Force notes that it received testimony from three families who shared their personal experiences with uninsured motorists. The Task Force appreciates the families' participation in its discussion and its consideration of an electronic verification system that is appropriate for Kansas.

In its discussion of the criteria established by 2008 SCR 1616 and in consideration of the recommendations and conclusions of the two previously authorized Task Forces, the Task Force makes a number of conclusions and recommendations:

- **Uninsured motorist solutions: Pool for compensation of property damages.** The Task Force considered the option presented by the Dodge City government representatives and appreciates the proposal to provide compensation for property damages through a surcharge on vehicle tags. *As the Task Force considers how best to address uninsured motorists, it believes that this proposal does not warrant further study, however, as the proposal further penalizes those individuals who choose to license or tag a vehicle. The Task Force is unaware of the actuarial necessity for the Pool and the potential impact on those individuals who pay vehicle fees and tag renewal fees.*
- **Uninsured motorist solutions: No Pay, No Play.** After considerable discussion about the appropriate level of non-economic damages able to be recovered by impaired drivers and uninsured drivers, *the Task Force is supportive of legislation that would bar uninsured motorists from the recovery of non-economic losses sustained as the result of an accident that occurred while the motorist was operating an uninsured vehicle.* The Task Force recommends that such motorists should not be permitted to recover any property damages in accidents where the motorist fails to maintain financial security, as required by Kansas law. The Task Force notes its consideration of 2005 HB 2286.
- **Design of an Electronic Motor Vehicle Financial Security Verification System.** The Task Force cites its continued review, time spent during the past three Interim sessions, and its considerable discussion on defining “real-time” verification and how to best develop a verification system for Kansas. The Task Force has reviewed the experiences in other states including the potential for a web-based verification system while carefully considering the needs of law enforcement, the Division of Motor Vehicles, the courts, the insurers, and Kansas motorists. *The Task Force acknowledges the importance of this time and review in developing a verification system and cites four goals to serve as the framework for addressing electronic real-time verification in the future:*

- *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.*

Proposed Legislation: None. (The Task Force is not permitted to introduce legislation).

BACKGROUND

The 2008 Legislature considered proposals to address uninsured motorists' issues, including the recommendations of a task force convened during the 2006 and 2007 Interim.

During its review the Legislature passed SCR 1616, which reauthorized the task force enacted by the 2006 Legislature (SCR 1619). The task force was reauthorized by the 2007 Legislature (SCR 1603).

The 2007 Task Force made three conclusions in its report to the 2008 Legislature:

- While the Task Force makes no recommendation on an electronic verification system, it does encourage continued monitoring of a number of issues identified during its meetings.
- The Task Force encourages AAMVA, NAIC, and NCOIL to adopt standards for states to use in developing their electronic financial security verification systems.
- The Task Force calls on the Legislature to evaluate lower-cost insurance options and review the compulsory requirements for proof of auto insurance.

The task force, as authorized by 2008 SCR 1616, was again called to study the design of an electronic motor vehicle financial verification

system for real time verification of compliance with the financial security requirements of KSA 40-3401 *et seq.* to combat uninsured motorists.

The resolution stated that the design of an electronic motor vehicle financial security verification system needs to include the following factors:

- The likelihood the system would reduce the number of uninsured motorists in the state;
- The likelihood the system would aid law enforcement in the identification of uninsured motorists in this state;
- The reliability of the system;
- The cost-effectiveness of the system;
- Privacy protections of the system;
- Data security and integrity of the system; and
- Any other issue related to the proper design and implementation of the system.

A copy of the Task Force reports can be obtained from the Kansas Legislative Research Department.

The 18 members of the Task Force were appointed as follows:

- The Insurance Commissioner or designated representative;
- The Secretary of Revenue or designated representative;
- The Director of the Division of Motor Vehicles or designated representative;
- Four legislators—one member each appointed by the Senate President, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader;
- One member representing a domestic property and casualty insurance company appointed by the Insurance Commissioner from a list submitted by the Kansas Association of Property and Casualty Insurance Companies;
- One member representing a foreign property and casualty insurance company appointed by the Insurance Commissioner from a list submitted by the Kansas Association of Property and Casualty Insurance Companies;
- One member representing foreign stock insurance companies appointed by the Insurance Commissioner from a list submitted by the American Insurance Association;
- One member representing automobile insurance companies appointed by the Insurance Commissioner from a list of the top six automobile insurance premium writers in Kansas;
- One member representing a property and casualty company appointed by the Insurance Commissioner from a list submitted by the Property Casualty Insurers Association of America;
- One member representing a property and casualty company appointed by the Insurance Commissioner from a list submitted by the National Association of Mutual Insurance Companies;
- One member representing the Kansas licensed insurance agents appointed by the Insurance Commissioner from a list submitted by the Kansas Association of Insurance Agents;
- One member representing licensed Kansas insurance agents appointed by the Insurance Commissioner from a list submitted by the Kansas Association of Insurance and Financial Agents;
- Two members appointed by the Governor representing law enforcement; and
- One member appointed by the Governor representing the consumer interests.

SCR 1616 requires a report that contains the results of the Task Force’s study and its recommendations and conclusions be transmitted to the Speaker of the House of Representatives, the Senate President, the Chairperson of the House Insurance and Financial Institutions Committee, and the Chairperson of the Senate Financial Institutions and Insurance Committee no later than the convening of the 2009 Kansas Legislature.

TASK FORCE ACTIVITIES

The Task Force conducted its meetings in the State Capitol on Thursday, October 9, 2008, and Thursday, December 11, 2008. Task Force meetings included testimony from members of the general public who had automobile accident experiences with uninsured motorists, a state legislator, Dodge City officials, Task Force members, and representatives of the Kansas Insurance Department and the Kansas

Department of Revenue. In December, the Task Force elected Representative Delia Garcia as its Vice-Chairperson.

During its October meeting, the Acting Chairman welcomed Task Force members and introductions were made. Task Force members were provided copies of the previous Task Force reports, the authorizing legislation, and other resource materials associated with the Task Force review.

Finding Solutions. Representative Pat George opened the discussion on finding solutions, including legislation, to addressing issues associated with uninsured motorists. Joining the representative were Dodge City Mayor Kent Smoll and the City Attorney Terry Malone. Mayor Smoll spoke of the high incidence of persons driving uninsured motor vehicles in western Kansas and suggested that one solution would be a requirement for an annual automobile insurance premium that is only refundable upon return of the vehicle tag. This solution, however, would create a real hardship for the average citizen, particularly many workers living from paycheck to paycheck. Mayor Smoll urged the Task Force to consider a fee that would be collected at the time of securing a tag for a vehicle – this modest fee (projected at \$10-\$15/vehicle) would be placed into an insurance pool to pay out property damage-only claims of less than \$5,000. Each claim would be subject to a small deductible to discourage fraud. (The State would contract with insurance companies to offer Uninsured Motorist Insurance coverage). Mayor Smoll also encouraged the Task Force and the Legislature to consider enactment of stricter penalties for driving uninsured, noting that a number of the uninsured also are unlicensed. City Prosecutor Malone noted that he has encountered many situations involving uninsured motorist accidents and the devastating consequences on the working poor. The prosecutor encouraged the Task Force to study the concept of uninsured motorist property damage coverage and noted efforts in other states. Task force members

discussed whether results had been seen in states mandating some level of Uninsured Motorist Property Damage (UMPD) coverage, whether current UMPD policyholders would cancel existing coverage (optional) and opt for coverage under the pool, and whether the suggested fee would be sufficient given the number of vehicles tagged in Kansas.

Perspectives. The Task Force received written testimony from Rusty and Julie Russell of Independence. The Russells detailed information about Ms. Russell's parents' injuries as a result of an auto accident near Caney in January 2005. While Ms. Russell's mother and the other driver sustained minor injuries, the auto accident proved fatal for her father. While dealing with the results of the accident and the resulting medical costs, the family learned that the other driver (who had failed to stop at a stop sign) had no auto insurance. The Russell family asked the Task Force to consider penalties for driving without insurance that are severe enough to help reduce the burden those motorists inflict on other drivers and their families. The Task Force also heard from Bill Bradt of Forsyth, Missouri, whose wife died as a result of an automobile accident on Highway 400 west of Fredonia. The driver at fault had no driver's license and the vehicle owner did not carry automobile insurance. Mr. Bradt asked that Kansas consider implementing a follow-up system to the compulsory liability insurance requirement to ensure that drivers retain that insurance coverage. New York and Louisiana were cited as states with systems Kansas could consider. Mr. Bradt encouraged the Task Force to consider whether or not a person involved in an accident with an uninsured motorist will be able to collect from the insured motorist's own insurance company and what will happen to the person's rates at the time of renewal, as well as the impact on an uninsured motorist's "rate" and effectively all insured drivers' rates. Mr. Bradt also encouraged the Task Force to review the Insurance Industry Committee on Motor Vehicle Administration (IICMVA) report

on using web-based auto insurance verification. Mr. Bradt also asked the Task Force to reconsider the severity of the penalties for driving without insurance. The Task Force discussed the status of states' verification systems as identified in the IICMVA report and a member distributed an article about the progress of web-based verification in Texas (the TexasSure database, funded by an annual fee of \$1 paid at the time of registration or registration renewal).

In December, the Task Force heard from Joe Francis, Humboldt, about a March 2008 accident affecting his daughter. His daughter has over \$500,000 in medical bills paid for by her health insurance. The other driver in the accident was at fault and was driving a borrowed car. The car insurance on the borrowed vehicle had expired about three weeks prior to the accident. Mr. Francis asked the Task Force to consider the expenses an insured driver faces when in an accident, whether at fault or not at fault. He further stated that a proposal worthy of consideration would be denying motorists compensation from insurers or other persons involved in an accident. Responding to a Task Force question, Mr. Francis indicated he was very supportive of pay-to-play options.

Low-Cost Policies. Task Force member Ginny Boyles (ACE representative) briefed the Task Force on low-cost auto insurance policies, including New Jersey's BASIC policy. Ms. Boyles noted this low-cost policy is designed for persons who have little or no assets to protect and provides minimum coverage protection. The BASIC policy provides \$5,000 in Property Damage Liability coverage and \$15,000 in medical coverage (Personal Injury Protection or PIP). It does not include any coverage if the insured injures someone else in an at-fault accident. However, an optional \$10,000 in Bodily Injury Liability is available. If the optional Bodily Injury coverage is not purchased, there is no coverage for pain, suffering or other personal hardships and the insured could be responsible for certain economic damages, such as lost wages,

in an at-fault accident. No coverage is provided under this policy for Uninsured/Underinsured Motorist or Physical Damage (although it may be offered as an option by some insurers), and only the Limited Right to Sue option is provided for PIP. Ms. Boyles encouraged consideration of minimum limits for Property Damage and Medical Coverage. At the time the BASIC policy was developed, there were affordability and availability issues in the marketplace, with very few choices of insurers. Task Force members discussed addressing availability and the Dollar-A-Day medical coverage in New Jersey (for eligible Medicaid recipients) and how a Kansas policy could look. Ms. Boyles also addressed low-cost options in California.

Verification System Design Requirements.

Neil Woerman, Director of Information Technology, Kansas Insurance Department, briefed the Task Force on work by the Department, along with Department of Revenue staff (Task Force members Alldritt and Blevins) and law enforcement representatives, to create requirements for the design of an electronic motor vehicle financial security verification system. Mr. Woerman outlined four goals or specifications for the system:

- 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.

Mr. Woerman also addressed twelve suggested requirements for the system design. Among those requirements are:

- Searches must be national, and if possible international, in scope, not just for vehicles registered in Kansas;
- Information must be “near real-time”. This term will need to be defined, but updates should occur as soon as practical following any motor vehicle transaction to initiate or cancel coverage;
- The system must be easily, reliably and accurately accessible from a patrol car, fixed locations and from other computer applications such as the state’s electronic vehicle registration system;
- The system must maintain compliance with approved national data standards for exchange of electronic insurance reporting information; and
- A new system meeting these requirements should be established legislatively to replace the current system maintained by the Department of Revenue.

Task Force Discussion. The Task Force discussed the specifications and requirements at length, with questions about whether a vendor could meet all twelve requirements and which states have met all or most of the requirements. Task Force members representing the Kansas Department of Revenue discussed modernization efforts with registration and driver’s licenses and the model presented by the National Law Enforcement Telecommunications System (NLETS) transactions. Department representatives also discussed the Vehicle Information Processing System (VIPS) modernization, noting a target completion of 2010. The Task Force discussed the importance of a national scope and access to national data as part of the framework for verification. Task

Force members reviewed the requirements for insurance companies, with a focus on how companies would report data (at the state level or to a national source), the impact of reporting requirements for smaller companies, and whether states had a common protocol for reporting, such as IICMVA protocols. Task Force members also discussed issues associated with enforcement, consequences for uninsured motorists, and how to best achieve a reduction in the number of uninsured motorists – from verification systems to ID cards (fraud prevention) to affordability and cost issues to education of the general public (risk of lawsuits, personal assets).

No Pay, No Play Options. In December, the Task Force received testimony from David Hanson, Kansas Association of Property and Casualty Insurance Companies (KAPCIC)/Property Casualty Insurers Association of America (PCI) regarding the concept of no pay, no play (or pay to play). Mr. Hanson reviewed a provision in the Kansas Automobile Injury Reparations Act (KSA 40-3117) regarding tort actions and the ability to recover damages for pain and suffering. Mr. Hanson asked the Task Force to review 2005 HB 2286 which would have provided that persons who are injured in an automobile accident, but who do not have PIP benefits protections (as required under the Act), would have no cause of action for the recovery of noneconomic loss sustained as a result of the accident. Additionally, persons convicted in connection with the accident under state laws governing breath or blood alcohol test refusal or test failure, DUI, and DUI for persons under 21, would not have a cause of action for the recovery of the noneconomic damages.

Alex Hegeli, PCI representative to the Task Force, talked about states’ laws addressing noneconomic damages and the uninsured motorist rates in those states. Mr. Hanson noted that KSA 40-3117 establishes a precedent by limiting recoveries. The Task Force members further discussed activities in other states including recovery of damages to vehicles,

towing laws, the ability for passengers to sue for pain and suffering, and the recovery of medical expenses.

Consideration of Design System Requirements. The Task Force continued its discussion of the design goals and requirements at its December meeting. Members discussed whether the requirements could be included in an RFP in the systems' modernization at the Kansas Department of Revenue. The Task Force received testimony presented by William Sneed, State Farm Insurance Companies, on behalf of Task Force member George Cooper. Mr. Cooper responded to the goals and requirements, noting that, in general, the goals serve as reasonable public policy objectives. Some of the suggested requirements, however, present a number of challenges for the insurance industry. Mr. Cooper responded to aspects of six of the requirements, including those requirements addressing the scope of the search, the expectation of having information "near real-time", multiple search fields being available for input, system compliance with approved national data standards, system ability to provide access to nearly 100 percent of vehicles operating on Kansas roads, and the issue of verifying financial security for all commercial vehicles. Mr. Cooper noted that "near real-time" and the availability of insurance information can vary greatly based upon the business practices and technologies of individual insurance carriers. Making multiple search fields available for input will require cooperative dialogue between insurers and vehicle registration personnel, as each collects different data to verify coverage/registration. Mr. Cooper also noted that verifying insurance for commercial vehicles is a difficult task, and there are differences between how states identify a commercial vehicle for registration purposes. In addition, commercial policies often are written on a fleet basis and do not identify specific vehicles (VINs would not be available as search criteria). Brad Smoot, American Insurance Association, also provided comments on the requirements. Mr. Smoot was supportive

of Mr. Cooper's comments and suggested the Task Force consider excluding commercial policies from verification requirements as was done in Wyoming and Oklahoma. Mr. Smoot encouraged the Task Force to support a verification system that is web-based to help achieve national access.

Task Force Discussion. The Task Force discussed the requirements and the goals for the verification system. Members discussed the scope of the searches and the necessity for the term "international." The discussion also focused on defining "real-time", what information insurance companies currently can access and verify, and the role a data clearinghouse could play in verification. The Task Force members questioned what data would be reported to a clearinghouse or similar entity, including policy number and VIN. The Task Force also discussed the merits of a web-based verification system and the potential to impact the number of uninsured motorists and whether it would be appropriate to seek re-authorization for the Task Force.

CONCLUSIONS AND RECOMMENDATIONS

The Task Force notes that it received testimony from three families who shared their personal experiences with uninsured motorists. The Task Force appreciates the families' participation in its discussion and its consideration of an electronic verification system that is appropriate for Kansas.

The Task Force makes a number of conclusions and recommendations:

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address uninsured motorists, it believes that this proposal does not warrant further study, however, as the proposal further penalizes those individuals who choose to license or tag a vehicle. The Task Force is unaware of the actuarial necessity for the Pool and the potential impact on those individuals who pay vehicle fees and tag renewal fees.

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