



Kansas Trial Lawyers Association

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**To: Rep. Jene Vickrey, Chairman  
Members of the House Insurance Committee**

**From: Callie Jill Denton  
Executive Director**

**Date: February 7, 2017**

**RE: HB 2104: Motor vehicle liability insurance; amending uninsured motorist coverage provision requirements and increasing the minimum policy limit for bodily injury (SUPPORT)**

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The Kansas Trial Lawyers Association (KTLA) is a professional organization of Kansas trial lawyers in practice across the state. KTLA members represent Kansans and their families who have suffered personal injuries in auto collisions. KTLA supports HB 2104, the injured motorist fair compensation act, and respectfully requests that the House Insurance Committee pass HB 2104.

### **I. Underinsured Motorist Credit/Offset.**

Kansas first enacted limited mandatory financial responsibility laws in 1939. The Legislature responded to public concern for the growing number of auto injury accidents in which injured Kansans were not compensated for their losses by a negligent driver. Over the years, the Legislature added teeth to financial responsibility laws to protect the public.

In 1968, uninsured motorist (UM) coverage became a mandatory part of auto coverage laws. In 1981, underinsured motorist (UIM) coverage equal to the amount of liability coverage also became mandatory. The public policy is to assure that policyholders are protected in the event they are in a collision with another driver with no insurance or insufficient insurance. Kansas drivers are required to have UIM coverage that equals the amount of liability coverage in their policy; the minimum amount of UIM coverage under the mandatory coverage laws is \$25,000.

UIM coverage is insurance the driver has with his/her own insurer. Following a collision, the injured driver may be able to recover an amount up to the limit of his/her UIM policy

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available for bodily injury or death. But to have a UIM claim under current law, the injured driver must have bodily injury damages more than the negligent driver's liability coverage, AND the negligent driver's available liability coverage must be less than the injured driver's available UIM coverage.

When both drivers have minimum coverage liability policies, or liability coverage policy of the same amount, there is no "available UIM" because the negligent driver does not have less liability coverage than the injured driver. The injured driver effectively has *no* UIM insurance, even though the negligent driver was underinsured and the injured driver's damages exceeded the liability coverage. Further, the injured driver has paid premiums for UIM coverage that does not and cannot provide coverage under current law. Under current law, UIM coverage is illusory and misleading to policyholders in such circumstances.

HB 2104 eliminates the deception of the "set off" or "credit" in UIM coverage so that policyholders get the coverage they purchase, and that they expect.

## **II. Mandatory minimum liability insurance coverage; increase to 50/100.**

The Kansas Auto Injury Reparations Act (KAIRA) was passed in 1973 to provide a means of compensating persons promptly for accidental bodily injury. The Legislature has amended the law once to increase the minimum liability requirements for bodily injury, in 1981, to \$25,000 per person/\$50,000 per accident, which is the current law.

HB 2104 increases the minimum liability limits to \$50,000 per person/\$100,000 per accident to keep pace with inflation and changes in medical costs. Today, \$25,000 in 2016 is less than \$10,000 in 1981 dollars, and when adjusted for medical CPI, \$25,000 is less than \$5,000 in 1981 dollars. When adjusted for CPI, \$25,000 in 1981 dollars has the buying power of over \$66,000, or \$140,000 when adjusted for medical CPI, in 2016.

Even though a Kansas driver with minimum liability is in full compliance with the law he or she will most likely be underinsured and unable to compensate passengers, other drivers, or pedestrians for bodily injuries the driver causes. When drivers with minimum coverage limits cannot pay for injuries they cause, costs are passed on to the injured driver and his insurance company. Or bills go unpaid and are passed on to hospitals, doctors, Medicaid, and Medicare.

There are several states like Kansas with 25/50 minimum liability limits. But 25/50 states are not an apples-to-apples comparison; Kansans may be worse off. Policyholders in other states with 25/50 may have statutory or regulatory rights that Kansas policyholders do not have. For example, some states permit insurance policies to be "stacked" to increase coverage limits; Kansas does not permit stacking. Other states' financial responsibility laws are not necessarily satisfactory; like Kansas', they may have been enacted decades ago and decreased in buying power due to inflation. Other states have also considered legislation to increase mandatory liability coverage requirements.

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HB 2104 should be considered in light of everything that influences premium cost and affordability. Policy limits (25/50 versus 50/100) influence premium, but so do underwriting criteria and insurance rating by insurance companies. Factors including driver's occupation, income, credit rating, marital status, education, vehicle make and model, home ownership, age, and gender, and of course driving record all affect premium. Balancing affordability and compliance with mandatory insurance laws requires fair consideration be given to all premium cost drivers.

In 2016, the Legislature increased the minimum liability coverage for property damage for the first time since 1981 from \$10,000 to \$25,000. In 2017, it is time for the Legislature to increase the minimum liability coverage for bodily injury.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the House Insurance Committee recommend HB 2104 favorable for passage.